1896 8

THE OBLIGATION

Reſulting from the

OATH of SUPREMACY,

To Aſſiſt and Defend the Pre-eminence or Prerogative

OF THE

Diſpenſative Power

BELONGING

To the KING, his Heirs and Succeſſors.

In the aſſerting of that Power various Hiſtorical Paſſages occurring in the Uſurpation after the Year 1641. are occaſionally mentioned; And an Account is given at large of the Progreſs of the Power of Diſpenſing as to Acts of Parliament about Religion ſince the Reformation; and of divers Judgments of Parliaments declaring their Approbation of the Exerciſe of ſuch Power, and particularly in what concerns the Puniſhment of Diſability, or Incapacity.

Princes are Supreme over Perſons, not over Things.

This is the Supreme Power of Princes which we teach, that they be God's Miniſters in their own Dominions, bearing the Sword, and freely to permit and publickly to Defend that which God commandeth in Faith and good Manners, &c.

Princes may Command the Bodies of all their Subjects in time both of War and Peace, &c.

Out of all Queſtion where Princes may by God's Law Command, all Men muſt obey them, &c.

The Prince may diſcharge the Servant, but no Man can diſcharge the Subject.

The Word of God teacheth you to obey Princes; the words of men cannot looſe you.

BISHOP *BILSON* of the *SUPREMACY.*

LONDON,

Printed for *Thomas Dring* at the *Harrow* at *Chancery-Lane End* in *Fleetſtreet*, *William Crook* at the *Green Dragon* without *Temple-Bar*, and *William Rogers* at the *Sun* over againſt St. *Dunſtan's* Church in *Fleet-ſtreet*, 1687.

THE

OBLIGATION

Resulting from the

OATH of SUPREMACY,

To Assist and Defend the Pre-eminence or Prerogative

OF THE

Dispensative Power

RELONGING

To the KING, his Heirs and Successors.

In the asserting of that Power various Historical Passages occurring in the Usurpation after the Year 1641. are occasionally mentioned: And an Account is given at large of the Progress of the Power of Dispensing as to Acts of Parliament about Religion since the Reformation; and of divers Judgments of Parliaments declaring their Approbation of the Exercise of such Power, and particularly in what concerns the Punishment of Disability, or Incapacity.

LONDON,

Printed for Thomas Dring at the Harrow at Chancery-Lane End in Fleet-street, William Crook at the Green Dragon without Temple-Bar, and William Rogers at the Sun over against St. Dunstan's Church in Fleet-street, 1687.

To the Right Honorable

JOHN Earl of MELFORT;

Viſcount of Forth, *Lord* Drummond *of* Rickartone, *&c. His Majeſty's Principal Secretary of State for the Kingdom of* Scotland, *and one of His Majeſty's moſt Honorable Privy Council in both Kingdoms of* England *and* Scotland, *&c.*

MY LORD,

AS the *Hiſtorian* hath told us of *Ireland*, that long ago while the Arts and Sciences were generally baniſh'd from the Chriſtian World they were enthroned in *Ireland*, and that Men were ſent thither from other Parts of Chriſtendom to be improved in Learning; ſo I have elſewhere obſerv'd that in ſome late Conjunctures (and particularly during the turbid Interval of the *Excluſion*) men might well be ſent to *Scotland* to learn *Loyalty*.

And I having taken occaſion in the firſt Part of this Diſcourſe to ſhew my ſelf a juſt honourer of that Country, and (as I may ſay) ſomewhat like a Benefactor to it by ſending thither the notices of ſome paſs'd great Tranſactions that might poſſibly there give more light and life to the Moral Offices of Natural Allegiance or Obedience, did hold my ſelf obliged in Common Juſtice to addreſs this Part of my Work to your Lordſhip. For as your Station here quaſifies you beyond other Subjects to receive what Tribute is offer'd to your Country, ſo your handing it thither will neceſſarily make it there the more acceptable.

And when I conſider with what an incomparable Tenderneſs for the Monarchy and its Rights ſo many of the *Statutes* of *Scotland* ſince the *Year* 1660. have been adorn'd, I am apt to think that any matter of Preſidents or Records by me recover'd out of the Sea of time where they lay ſo long uſeleſs and neglected, and now happening to be ſerviceable

to

to thoſe Moral Offices before-mention'd, would by the ſo many in that Kingdom devoted to conſummate Obedience and Loyalty, be more valued then if I could have imported into that Realm another ſuch Treaſure as that which lay ſo long buried in the *Ocean* near the *Bahama Iſlands*, and that whoever Contributed to your Loyal Country any Subſtantial Notions that might enrich it in the diſcharge of the Duties of the *born* and *ſworn* Allegiance, would be eſteem'd there as ſome way ſharing in the honour of *Arauna*, in *giving like a King to a King*.

Long may your great Maſter live happy in the Enjoyment of the faithful Services of ſo vigilant a Miniſter as your Lordſhip, who by the univerſality of your Knowledge accompany'd with univerſal Charity for all Mankind, have appear'd to be born, as I may ſay, for the time of his moſt glorious Reign, the time choſen by Heaven for Mercies Triumph on Earth.

Nothing vulgar was to be expected from a Perſon of your Lordſhip's extraordinary intellectual and moral Endowments, and in whom the *Loyalty* and other Virtues of your many noble Anceſtors have (as it were) lived *extraduce*. And the World would be unjuſt to you if it acknowledged not its great Expectation anſwer'd by your greater Performances, and particularly by your having been ſo eminently Miniſterial in the Eaſing both the Cares of your Prince, and of all his Subjects too by the Figure you have made in promoting the Eaſe of his People's Conſciences, and in further ennobling and endearing the Name of *DRUMMOND* by your Lordſhip's Proſecuting that by the Bravery of Action, which the *HISTORIAN* of that your Name did by Words, when he tranſmitted to Poſterity the moſt Chriſtian and Stateſman-like *Speech* of Liberty of Conſcience, I know extant, and as ſpoke by a *Roman-Catholick* Councellor in *Scotland* to King *James* the *Fifth*.

I moſt humbly kiſs your Lordſhip's Hands, and am,

My Lord,

Your Lordſhips moſt Obedient Servant,

P. P.

THE OBLIGATION

Reſulting from the

Oath of Supremacy,

To Aſſiſt and Defend the Pre-eminence or Prerogative

OF THE

Diſpenſative Power,

Belonging to the KING, his Heirs, and Succeſſors, &c.

PART I.

A. IN this Kingdom of *England*, ſo naturally of old addicted to *Religion* and vehemence in it, as to give a Biſhop of *Rome* cauſe to complain, he had more *trouble* given him by *Applications* from *England* about it, then from all the World beſide; and afterward to make *Geneva* wonder at the *Sabbatarians* here exceeding the *Jewiſh* ſtrictneſs; and to cauſe *Barclay* in his *Eupho mio* to ſay of the Engliſh, *Nec quicquam in numinis cultu modicum poſſunt*, and that our ſeveral *Sects* thought *unos ſe Cæleſtium rerum participes, exortes cæteros omnes eſſe:* did you ever obſerve, hear or read of the *ſtyle* of *Tenderneſs of Conſcience* ſo much *uſed* as in the *year* 41. and ſometime afterward?

B. I have not. From the *Date* of King *Charles* the Firſt's **Declaration to all His loving Subjects** about that time, wherein he ſpeaks of his Care for **Exemption of Tender Conſciences**, till the *Date* of King *Charles* the Second's **Declaration** from **Breda**, wherein the *Liberty* of *Tender Conſciences* is Provided for, the *clauſe* of eaſing Tender Conſciences ran through the Meſſages, Addreſſes, and Anſwers that paſſed between King and Parliament almoſt as much as the *Clauſe* of *proponentibus legatis* did run through the *Councel* of *Trent*.

A. But were not their *Conſciences* extremely *erroneous* who thought themſelves bound then to advance Religion by War?

B. Ay, and by a *Civil* War (as you might have added) againſt a *Prince* of the *tendereſt* Conſcience imaginable: for that *Character* he had from an

Arch-biſhop in his *Speech* in the *Parliament* of 40 who ſaid, *Our Sovereign is, I will not ſay above other Princes, but above all Chriſtian men that ever I knew or heard of, a man of moſt upright, dainty, and ſcrupulous Conſcience, and afraid to look upon ſome Actions, which other Princes abroad do uſually ſwallow?* and he might have added, a *Prince* the *real* Tenderneſs of whole Conſcience had ſo often favour'd the *nominal* tenderneſs of others, who inſtead of being *Tender-hearted Chriſtians*, were *Stiff-necked Jews*; and who might juſtly apprehend that it was only *duritia cordis*, inſtead of *Tenderneſs* of *Conſcience* he *diſpens'd* with, and as when God *diſpens'd* with the *Jews* in *Polygamy*.

For ſince *Tenderneſs* of *Conſcience* doth neceſſarily render a man abſtemious from things lawful, and to be of a gentle ſubmiſſive temper not only to his Equals, but Inferiors, and to be *merciful* even to *brute* Creatures, and not only averſe from ſuing any one about *Penal* Lawes, but ready to remit ſomewhat of his *Right* rather then to go to *Law* with a Stranger, and much leſs with ones Father; the *Pater Patriæ* ſeeing any men outraging the Lawes, and the quiet of the whole Realm by that wilde brutiſh thing call'd War, (for *ferinum quiddam bellum eſt*) might well judge them utterly devoid of all *Tenderneſs* of *Conſcience*. I ſhall therefore frankly tell you, that no doubt but their Conſciences were extremely *erroneous*, or rather *ſeared*.

Our great Writer of Conſcience, Biſhop *Sanderſon* in his *Sermon* on *Rom.* 14. 13. diſcuſſing the Cauſes from which mens doubtfulneſs of mind may ſpring, and ſaying that *ſometimes it proceeds from Tenderneſs of Conſcience, which yet is indeed a very bleſſed and a gracious thing*, doth very well add, *but yet (as tender things may ſooner miſcarry) very obnoxious through Satan's diligence and ſubtlety to be wrought upon to dangerous inconveniences*.

And if we Conſider that a *Civil* War cannot be lawful on both Sides, however a *foreign* one may, we may well account that any deluded *melancholy* People who were tempted to raiſe a Civil War out of a blind Zeal for Religion, and to aſſault the *Thirteenth* of the *Romans* out of the *Apocalypſe*, had *hard* Spleens inſtead of *tender* Conſciences, and that they have *ſoft* Heads inſtead of *tender* Hearts, who try to make Religion a gainer by War.

But indeed the *Project* of Planting Religion and Propagating the Church by War, that is deſcribed to be *Status humanæ Societatis diſſolutæ*, and that ſo preſently opens to all mens view the horrid Scene of *Contempta Religio*, *Rapta profana*, *Sacra profanata*, is ſo vain, that the old *Proverbial* Impiety of ſuch who did *caſtra ſequi* how victorious ſoever, hath naturally help'd to make *Conquering* Nations embrace the very *Religion* of the *Conquered*; a thing *exemplify'd* in the Conqueſts of the *Danes* and *Saxons* in *England*, of the *Gothes* in *Italy* and *France*, and *Spain*, and of the *Moors* in *Spain*, and in the *Turks* having overcome the *Saracens*, embracing the *Saracens* Religion.

And the Vanity of Reforming the World by War, that Profound and Conſcientious Stateſman Cardinal *D'Oſſat* in his Third Book, 86*th* Letter and to *Villeroy*, A. 1597. hath well taught us, and where he mentions how he urged to the *Pope* the reaſonableneſs of *Harry* the 4*th's*, ſo religiouſly obſerving the great *Edict* of *Pacification, and that the many Wars made again and again by Hereticks, ſerv'd for nothing but in many places to aboliſh the Catholick Religion, and in a manner all Eccleſiaſtical Diſcipline, Juſtice, and Order, and to introduce Atheiſm with the Sequel of all ſorts of Sacrileges, Parricides, Rapes, Treaſons and Cruelties, and other ſorts of wickedneſs*, &c. and afterward that on *the making War, all the Malecontents, all*

People

People indebted and neceſſitous, all Debauchees, and Vagabonds, all Thieves and other Criminals, whoſe Lives were become forfeited to the Law, of what Religion or Opinion ſoever they were, were wont to joyn with the Hugonots, and did more harm to the Church, and Religion, and good manners in one day of War, then they could in a hundred days of Peace.

Thus *he* who *ſits in the Heavens* had them here *in deriſion*, while they in effect thus preſumed to *tranſproſe* Scripture, and to ſay *Glory to God in the higheſt, and on Earth* War, *and* ill will *towards men*; and while according to that Saying in Arch-biſhop *Laud*'s famous *Star-Chamber-Speech*, viz. *No Nation hath ever appear'd more jealous of Religion then the People of* England *have ever been*, they were under ſuch Tranſports of miſguided Zeal, as to *adore* that their *jealouſie*, and to offer *Sacrifices* to it with as much Contempt of Heaven and Cruelty to Mankind, as ever were offer'd to *the image of Jealouſie* referr'd to by *Ezekiel*; and to which the tendereſt of their Relations were not thought too coſtly Victims: and to which their truly *Tender-Conſcienced* King, who like *Moſes* with *Tenderneſs carried them in his Boſome as a Nurſing-Father beareth the ſucking Child*, and who ſometimes out of *Tenderneſs* to *ſeveral* of his Complaining Children *Sacrificed* the rigour of his *Penal* Lawes, and to whom they ſhould have been *ſubject* for that *Tender* thing *Conſcience* ſake, was himſelf at laſt *Sacrificed*.

How did that Pious Prince ſometimes in relation to his Heterodox Proteſtant Subjects imitate the *Father* of the *Prodigal*, who *when his Son was yet afar off, ran to meet him, fell on his neck and kiſs'd him*, a thing acknowledg'd by an Eminent learned Divine, Mr. *John Ley* in his *Book* call'd *Defenſive Doubts, Hopes and Reaſons*, Printed in the year 1641. and where in *p.* 123. urging the *Biſhops* to procure the *Revocation* of a late *Canon* of the Church, and having ſaid *wherein if they appear and prevail, they need not fear any diſparagement to their Prudence by withdrawing that they have decreed, ſince the wiſeſt Stateſmen and greateſt Governors have uſed many times to comply ſo far with popular Diſpoſitions, as to vary their own Acts with relation to their liking, as the Pilot doth his Sails to comply with the wind*, he addeth, *And you cannot have a more authentic Example both to induce you to this, and to defend you in it from all Imputations, then that of our Sacred Sovereign, who rather then he would give any Colour of Complaint for aggrievances to his People*, was pleas'd *to DISPENSE with the five Articles of* PERTH's *Aſſembly, and to diſcharge all Perſons from urging the Practice thereof upon any either Laick or Eccleſiaſtical Perſon whatſoever, and to free all his Subjects from all Cenſures and Pains whether Eccleſiaſtical or Secular, for not urging, practiſing, and obeying any of them*, **tho they were eſtabliſh'd both by a General Aſſembly, and by Act of Parliament.** *King* Charles *his large* **Declaration of the Tumults** in Scotland, *p* 370. & *p.* 389. *And for his* OWN *Acts* (*for theſe Articles of* Perth *were propounded and ratify'd in the Reign of his Royal Father*) *he impoſed the Service Book, the Book of Canons, and high Commiſſion upon his Subjects in* Scotland, *and upon their humble Supplication, was content graciouſly to grant a Diſcharge from them: paſſing his Princely Promiſe that he would neither then nor afterwards preſs the Practice of them, nor any thing of that nature, but in ſuch a fair and legal way, as ſhould ſatisfie all his loving Subjects. The Duplys of the Divines of* Aberdene, *p.* 54. and *p.* 130, 131. Whereupon Mr. *Ley* thus goes on, *viz. Wherein Wiſe men who judge of Conſultations and Acts by their probable Effects, and not unexpected Events, cannot but highly commend His Majeſty's Mildneſs and Clemency: which we doubt not would condeſcend to your Requeſts for a removal of this great aggrievance if you would pleaſe to interpoſe your Mediations to ſo acceptable a purpoſe, and upon our humble*

ble ſute, which in all ſubmiſſive manner we tender to your Lordſhip (and by you to the reſt of your Reverend Order) we hope you will do ſo, ſince we have it upon his word (His Royal Majeſty's word, which neither in Duty nor Diſcretion we may diſtruſt) that the Prelates were their greateſt Friends (i. e. of his *Scottiſh* Subjects) *their Councels were always Councels of Peace, and their Solicitations vehement and earneſt for granting thoſe unexpected Favours which we were pleas'd to beſtow upon our People.* The *King's* large *Declaration*, p. 420

Thus then the Royal *Diſpenſation* with the five *Articles* of *Perth* was at the *Interceſſion* of the *Biſhops*, tho' they knew the ſame Eſtabliſh'd by *Act* of *Parliament*, graciouſly afforded to his *Scotiſh* Subjects.

Thoſe *Articles* of *Perth* related to various Religionary Matters, *viz* The *introducing of Private Baptiſm, Communicating of the Sick, Epiſcopal Confirmation, Kneeling at the Communion, and the obſerving ſuch ancient Feſtivals as belong'd immediately to Chriſt:* and of which Doctor *Heylin* in his *Hiſtory of the Presbyterians* having ſpoken ſaith, *That the King's indulging the* Scots *in Diſpenſing with the Penal Laws about them, was an Invitation to the* Iriſh *Papiſts to endeavour by armed force to Compaſs the King's Diſpenſation.*

But how tenderly the *Conſciences* of the Roman Catholics in *Ireland* were in the Reign of the *Royal Martyr* THEN Protected under the *Wing* of the *Diſpenſative Power*, contrary to what the *Dr.* obſerv'd, any one may ſee who will Conſult *my Lord Primate* Bramhal's *Replication to the Biſhop of Chalcedon*, where he ſaith, That *the Earl of* Strafford *Lord Lieutenant of* Ireland *did commit much to my hands the Political Regiment of that Church for the ſpace of Eight years. In all that time let him name but one Roman Catholic that ſuffer'd either Death or Impriſonment, or ſo much as a pecuniary Mulct of Twelve Pence for his Religion upon any Penal Statute, if he can, as I am ſure he cannot*, &c.

And ſuch was the acquieſcence of the *Populace*, and of *the three Eſtates* in the Penal Lawes there againſt the *Roman Catholics* being thus dead or aſleep, that in the Printed *Articles of Impeachment againſt the then Lord Chancellor of* Ireland, *and that Lord Primate th n Biſhop of* Derry, *and* others of His *Majeſty's* Publick *Miniſters* of State exhibited by the *Commons* to the *Lords* in the *year* 1640. there is not a *ſyllable* of Complaint againſt thoſe *Lawes* being ſo *diſpens'd* with by Connivence.

Nor yet in the Printed *Schedule* of *Grievances* of that Kingdom *voted* in the *Houſe* of *Lords* there to be tranſmitted to the *Committee* of the ſame *Houſe*, then attending in *England* to purſue *Redreſſes* for the ſame, is there any repreſentation of ſuch *Indulgence* being any *Gravamen*, nor yet of the great Figure the *Iriſh* Papiſts then made in the Government, the *Majority* of the *Parliament*, and of the *Judges* and *Lawyers* then being ſuch.

And purſuant to that Prince's *Indulgence* offer'd to the *tender* Conſciences of his Subjects in the *year* 41. he was graciouſly pleas'd in the *Treaty* at *Uxbridge* to order his *Commiſſioners* who were ſuch renown'd *Confeſſors* of the *Church* of *England*, to make the firſt Royal *offer* there *that freedom be left to all Perſons of what Opinion ſoever in Matters of Ceremony, and that all the Penalties of LAWS and Cuſtoms be SUSPENDED.*

And the truth is, ſince the *Chriſtian* Religion did in its *firſt* ſettlement ſo rationally provide for its Propagation in the World, and its beſpeaking the favour of Princes by its enjoyning *Subjection* and Obedience to their *Lawes*, not only for *Wrath*, but *Conſcience* ſake; and ſince that *Principle* of *humane Lawes binding the Conſcience* (which was ſo often and ſo publickly *avow'd* by that *Prince* and Arch-biſhop *Laud*, and Biſhop *Sanderſon* and the *Divines*

of

of the Church of *England* in General) is the ſureſt guard to Princes *Thrones* and their *Tribunals*; and that therefore 'tis the Intereſt of the *Prince* and *People* to be more watchful in preſerving that *Principle* then all the *Jewels* of the *Crown*, or *Walls* of the Kingdom: that *Prince* did therefore neceſſarily take Care to preſerve and to perpetuate in ſome of his *tender-Conſcienced* Subjects, a continued *Tenderneſs* for his *Lawes* by his lawful *Diſpenſative* Power (as particularly in the *Caſe* of his *Scottiſh* Subjects) in taking off the *Obligation* of *Obedience*, and of Conforming themſelves to the Eſtabliſh'd Lawes; for ſuch *Diſpenſation* intrinſecally notes the *taking off* ſuch Obligation from the Perſons diſpens'd with. And it is indeed a *Soleciſm* for any one to ask *Indulgence* from a *Prince* who owns the *Law* of the *Land*, binding him in *Conſcience*; if he doth not think ſuch Prince perſwaded that his Power of granting it is a part of that *LAW*.

He was not ignorant of his *Father*'s Averſion againſt the *Penal* Lawes in general, and on which Account my Lord *Bacon* celebrating him, ſaith, *As for Penal Lawes which lie as ſnares upon the Subjects, and which were as a* Nemo ſcit *to King* Henry 7. *it yields a Revenue which will ſcarce pay for the Parchment of the King's Records at* Weſtminſter. And religionary Penal Lawes requiring the greateſt tenderneſs, as he found when he came to the Government, that the two moſt famous Puritan *Divines*, Mr. *Hilderſham* and Mr. *Dod*, Men of great Probity and Learning, had often been in his *Father*'s time Purſuant to the *Act* for Uniformity *diſabled* from Preaching, and been *re-inabled* to it by particular Indulgence (and as likewiſe *Fuller* tells us in his *Church Hiſtory*, that Biſhop *Williams* when he was *Lord Keeper* of the Great Seal of *England*, procured a *Licence* from King *James* under the Great Seal for Mr. *Cotton* the famous *Independent* to Preach notwithſtanding his *Non-Conformity*) ſo he in the ſame manner that his Royal *Father* did, held the *Reins* of the Law *looſe* in his hands as to thoſe two other *Non-Conformiſts* beforemention'd.

The *Hiſtory* of Mr. *Hilderſham*'s Life, mentions that he was *ſilenced* in *June*, A. 1590, and *reſtored* again in *January*, A. 1591. Again he was *deprived* and *ſilenced*, April 24. *A.* 1605. *for refuſal of Subſcription and Conformity*, and after ſome time again *reſtored*: and was again *Silenced* in *November*, A. 1611. by the *King's* particular *Command*; and on *April* 23. A. 1613. he was judicially admoniſhed by the *High Commiſſion*, that *ſaving the Catechizing of his own Family only, he ſhould not afterward Preach, Catechize, or uſe any of the Offices or Function of a Miniſter publickly or privately till he ſhould be lawfully reſtored and releas'd of his ſaid Suſpenſion.* But ſhortly after the beginning of the Reign of the Royal Martyr, he was *again reſtored*; and was afterward again *ſilenced*, and ſo continued till *Auguſt* 2. A. 1631. and then he was again *reſtored*. And Mr. *Dod*'s *Life* repreſents his Caſe as parallel with this before-mention'd. He was in King *James* his time *ſuſpended* and *reſtored*, and again by the *King's* particular *Command* diſabled from Preaching, and was by King *Charles* the Firſt *re-ennabled* or *reſtored*.

Thus as *fortis fortem amat*, one *tender-Conſcienced* man too loves another ſuch; and the Executive Power of the Law in *re-ennabling* after temporary *Diſability*, was *tenderly* adminiſtred by theſe our Princes to *theſe* Conſcientious Men, with reſpect to their real Capacity of Favour to be ſhew'd them.

A. You have here given me a taſte *en paſſant* of *part* of the Diſpenſative Power, as exerciſed in the *three* Realms during ſome Conjunctures in the Reign of King *Charles* the Firſt, and for which I thank you, and particularly for what you told me of the *Act* of *Parliament* diſpens'd with in *Scotland*,

of which I never heard before; and am apt to ſuppoſe a thing of that Nature was never done before in that Realm.

B. I can aſſure you, to thoſe who know the Publick Tranſactions of that Kingdom, the thing will not in the leaſt ſeem new. I can tell you that on the *26th* of *November*, A. 1593. King *James* the 6th of *Scotland* made an *Act* of *State* in favour of three Roman-Catholick Earls, *Huntly*, *Arroll* and *Angus*, by which Act he allow'd them ſeveral Priviledges, contrary to *Acts* of *Parliament* made againſt Roman-Catholicks. And His Majeſty in his Act of State expreſly *diſpenſeth* with thoſe *Acts* of *Parliament*: and which *Diſpenſation* tho Queen *Elizabeth* importuned him to revoke (and for that purpoſe ſent the Lord *Zouch* as her *Embaſſador* to him) he ſtill adhered to the Act of State he had made, and continued his *Diſpenſation*.

A. Have you this Matter of *Fact* out of any of the *Records* in *England* or *Scotland*?

B. I have it out of the *Original* Papers under the hand of Queen *Elizabeth* and her great Miniſter *Burghly*, and the Original Inſtructions of the Lord *Zouch* when ſent by her to expoſtulate with the King about it, that were lately in my Cuſtody, and by me ſent to our gracious *Sovereign*: and I ſhall ſome other time give you a more particular account of that *Diſpenſation*.

A. But (I beſeech you) did not the *Proteſtant* Divines of the *Church* of *Scotland* then cry out of the *unlawfulneſs* or *inexpedience* of that *Diſpenſation*?

B. I have read it in a learned Book of Dr. *Maxwell* a Scotch-man, Printed *A.* 1644. (and who was then Biſhop of *Killally* in *Ireland*, and had formerly been Biſhop of *Roſſe*) that Mr. *Robert Bruce* one of the *Miniſters* of *Edenburgh*, and who had a great *ſway* in the Church of *Scotland*, was pleas'd with the King's extending his Favour to *Angus* and *Arroll*, but out of a *factious* Complyance with the *Earl* of *Arguile*, was diſpleas'd at its being ſhewn to *Huntly*. But that Loyal *Biſhop* there acquieſceth in the reaſon of State, that inclined the *King* to Pardon the *three Earls*, and his thereby hindering the *growth* of *Faction* in *Scotland*, and providing for his more eaſie and ſecure acceſs to the *Throne* of *England* on the Death of Queen *Elizabeth*.

And ſo you may eaſily gueſs what ſort of men in *Scotland* look'd with an *evil eye* on that *Act* of the Royal *goodneſs*, and who did not. The *Biſhop* there had applauded the great depth of the King's *Wiſdom*, and his *tranſcendent Goodneſs* in the *Pardoning* the three *Earls*, and mention'd that *there was nothing of Religion in the Caſe of* Bruce's *Averſion againſt the Pardon of* Huntly, *for that* Angus *and* Arroll *were as bigot Papiſts, if not more then* Huntly.

I can likewiſe direct you to my Lord Primate *Bramhal*'s celebrated Book call'd *A Fair warning to take heed of the Scotiſh Diſcipline*, where in *Chap.* 6. thus entituled, *viz. That it robs the Magiſtrate of his Diſpenſative Power*; he ſaith by way of inſtance, *When the Popiſh Earls of* Angus, Huntly, *and* Arroll, *were excommunicated by the Church, and forfeited for Treaſonable Practices againſt the King, it is admirable to read with what Wiſdom, Charity, and Sweetneſs his Majeſty did ſeek from time to time to reclaim them from their Errors*, &c. *and on the other ſide to ſee with what bitterneſs and radicated Malice they were proſecuted by the Presbyteries and their Commiſſioners*, &c. *ſometimes threatning that they were reſolv'd to purſue them to the uttermoſt, tho it ſhould be with the loſs of all their Lives in one day*, &c. *ſometimes preſſing to have their Eſtates confiſcated*, &c. He refers there in his Margin to *Aſſ. Edinb.* 1594.

But

But any one who ſhall conſult *D'Oſſat's Letters*, and there in the *Second Book* carefully read over the 37th *Letter* that was writ to *Villeroy* in the year 1596, and three years after the Date of King *James* his *Act* of *State*, and obſerve what that great Sagacious *Cardinal* there refers to concerning the Circumſtances of thoſe *three* Earls, and how all the Prudence that could be ſhewn by man, was but little enough for the Conduct of that King in that Conjuncture, in order to his removing what Impediments either from *Rome* or *Spain*, or his *Native* Country might obſtruct his Succeſſion to the Crown of *England*; will not wonder at his having *diſpens'd* and continued his *Diſpenſation* as aforeſaid.

A. I have not yet ask'd you whether the *Divines* of the *Church* of *England*, did not *lift up their voices like a Trumpet* againſt the *Diſpenſative* Power thus exerciſed by their Prince, as you have mention'd?

B. They diſcharged their Duties in Preaching occaſionally againſt all growing Errors: but they wanted none to mind them of the Saying, *Impium eſſe qui Regi dixerit, Inique agis.* The Pious and Learned *Author* of *Certain Conſiderations tending to Peace*, &c. mentions how the *Biſhop* of *St. Davids* in King *James's* Reign, A. 1604. did in a ſet *Speech* in *Convocation* ſhew, that *Miniſters were not in the late Archbiſhop's time diſabled from their Miniſtry on the Account of Non-conformity to the Ceremonies by Law enjoyn'd*; and concluded his *Speech* with the *motion* of *Petitioning* the *King*, That *if the removal of ſome of the Ceremonies enjoyn'd could not be obtain'd, nor yet a* Toleration *for them of more ſtay'd and temperate Carriage, yet at leaſt there might be procured a mitigation of the Penalty*, &c.

And as the *Suſpenſion* or *Diſabling* of *Hilderſham* and *Dod* from their Miniſterial Functions, ſo the *Reſtoring* of them to the ſame without all ſuch things done by them as the ſtrictneſs of the Lawes required, was in both thoſe Princes Reigns *executed* by the *Biſhops*.

Nor do I remember to have read of any *Divine* of the Church of *England* to have in the leaſt look'd with an *evil eye* on the *goodneſs* of the *Diſpenſative* Power in the Reign of King *Charles* the Firſt being extended to particular Perſons; but the hated *Sibthorpe*, who in his *Sermon* of *Apoſtolick Obedience* (as he call'd it) doth ſpeak of *Mens being bound to obſerve the Lawes of the Land where they live, except they will ſuffer as baſe bodies, or except they will have that inconvenience granted, that the general Lawes or Government of a Nation muſt be* diſpens'd withal, *according to the particular Conceit and Apprehenſion of every private Perſon: whereout what* Toleration *of Hereſy, what* Connivence *at Errors, what danger of Schiſms in the Church and Factions in the State, muſt neceſſarily follow*, &c. and having mentioned *the Liberty of a few erroneous Conſciences bringing the Bondage of many regulated Commands*, he ſaith, *We muſt prefer the general before the particular, and not let every one be looſe to their Liſt and Affection, but all* muſt *be kept within the Liſts of their Duty and Subjection.*

And I but juſt now told you of that Prince's avowing, that the *Biſhops* adviſed him to the tenderneſs he ſhewed in *diſpenſing* with his Lawes, to gratifie the pretended tenderneſs of the Conſciences of ſome of his *Scotiſh* Subjects in that Conjuncture; and by which *Diſpenſing* one would have thought they might have been ſufficiently *antidoted* againſt the *ſtrong Deluſions* of entring into *War* for *Religion.*

Oh that ſuch *thoughts* had been then impreſs'd on their Minds, as are contain'd in the *General Demands of the Miniſters and Profeſſors of* Aberdene, *p.* 29. as I find them *cited* in the *Book* of Mr. *Ley* before-mention'd,

viz.

viz. *There be other means more effectual for holding out of Popery (and ſo of any unlawful innovation) in which we ought to Confide more then in all the Vowes and Promiſes of Men, yea, alſo more then in all the United Forces of all the Subjects of this Land, to wit, diligent Preaching and Teaching of the Word, frequent Prayer to God, humbling of our ſelves before him; and Amendment of our Lives and Converſations; and Arming our ſelves againſt our Adverſaries by diligent ſearching of the Scriptures, whereby we may encreaſe in the knowledge of the Truth, and in ability to defend it againſt the Enemies of it.*

Oh that the *Demagogues* of thoſe times had caus'd ſuch words then to have been *writ* in our Churches, or I might rather wiſh that thoſe *Heads* of Parties had had themſelves then *hearts* of *fleſh*, and that ſuch *tender* words had been like a *Law* written *there.*

But the *Urgentia imperii fata* were upon us; and that *delicate* uſe of *Conſcience* that is in 2. *Cor.* 13. 5. call'd *examen vel probatio noſtrum ipſorum*, and whereby it reſembled the *beſt* property of a *beam* in Scales, namely its *tenderneſs*, and *turning* with the leaſt part of a *grain*, was among the great *Actors* in that Rebellion quite laid aſide, and all the τὰ βαρύτερα τ̃ νόμε; i. e. *the weightier Matters of the Law* did not ſtir their Conſciences: and the great *Obligation* of their *Oaths of Allegiance* and *Supremacy* ſignify'd no more then the *duſt* of the *balance.*

Tho they pretended to ſo nice a *Tenderneſs* about any thing that look'd like an *Oath* in *familiar* diſcourſe and was not one, as at the Saying *in faith*, or *in troth*, and ſo would ſeem to come under *Solomon's* Character of *him that feareth an Oath*, (but as to which words of *in faith*, or *by my faith*, our Judicious *Sanderſon de Juramento* makes them amount to no more then a meer *Aſſeveration*, or at the moſt an *Obteſtation*; and ſaith, *that the genuine interpretation of the words*, by my faith, *whether in an aſſertory or promiſſory matter is this, I ſpeak from my heart, I pawn my faith to you that the thing is ſo*). yet they at the ſame time would *ridicule* or *ſeize on* any one who had told them of what they were *Sworn* to in the *Oath* of *Allegiance*, and of the *recognition* they made there, as the *words* of that *Oath* are, *heartily, willingly and truly* **upon the true faith of a Chriſtian.**

A. There was a *Solemn League and Covenant* afterward took by thoſe who had ſo apparently outraged the *Oath* of *Allegiance*, and it was taken generally by all the Layety and Clergy of the *Parliaments* Party; and was there not a general *Tenderneſs* of Conſcience expreſs'd then in the obſervance of that *Covenant*?

B. In the courſe of my Obſervation of Men and Things, ſome things have more particularly occurred to me to ſhew you that the great Takers and Impoſers of that *Covenant* did as plainly and without any ſeeming remorſe outrage their *Oath* in that *Covenant*, as they did their *Oaths* of *Allegiance* and *Supremacy.* For after they had firſt ſworn to *endeavour to preſerve the Reformed Religion in the Church of* Scotland *in Doctrine, Worſhip, Diſcipline, and Government*, and then ſworn *to endeavour to reform Religion in theſe Kingdoms of* England *and* Ireland *in all Points, according to the Examples of the beſt Reformed Churches*; and ſo were bound to *reform us* according to the *Pattern* of *Scotland*, (for *that* Church muſt neceſſarily paſs for the *beſt* Reform'd *Church*, that ſtands in need of no *Reformation*, being to be *preſerv'd* by them in the State it was) the *Parliament* inſtead of ſetling in *England* the *Presbyterian* Government which then in *Scotland*, had within its *Verge* four Judicatories, and all pretended to be *founded* on *Divine Right.* 1. A *Parochial Seſſion.* 2. A *Presbyterian Conſiſtory.* 3. A *Provincial Synod.* 4. A *General Aſſembly*, as they were bound to, did in effect ſettle

ERASTIA-

ERASTIANISM (a *Tenet*, or *hypotheſis* of Church-Government that the *Scotch* and *Engliſh* Presbyterian *Divines* avowed as great an hatred of as of *Popery* it ſelf; *Eraſtianiſm* giving the *Supreme* Power in Eccleſiaſticals to the *Civil* Magiſtrate) and in their Printed *Votes* and *Orders* reproved the *Presbyterian* Divines for challenging an *Arbitrary* Power, and which they would not grant, *nor ſet up ten Thouſand Judicatories within the Kingdom*, as the *Parliaments* words were: referring to the Scots *Parochial* Seſſion, where a competent number of *Lay-Elders* (whom they call *Presbyteri non-docentes*) and *Deacons* proportionable to the Precinct and Extent of the Pariſh are conjoyn'd, and which aſſociate Body thus compacted is the *Spiritual* Parochial *Sanhedrim*.

But this very *firſt* Point of that Church-Government, the Parliament hinder'd Presbytery from gaining here, and oppoſed its moving in that loweſt Sphere of the *Parochial* Seſſion of ſetling ſo many Thouſand Eccleſiaſtical *Courts* of *Pye-Powder* in *England*, and whereby it could never hope to climb up to the *Primum mobile* of a *General Aſſembly*, which in reality was the *Sphere* the *Parliament* it ſelf moved in.

Mr. *Prynne* who was one of the greateſt Champions for that *Covenant*, was yet an Eminent profeſs'd *Eraſtian*, and Mr. *Coleman* a Member of the *Aſſembly* of Divines, another of thoſe Champions for the *Covenant*, was likewiſe a declared *Eraſtian*, and a great *Favourite* of the Parliaments, and whoſe frequent *Sermons* before them for *Eraſtianiſm* were Printed by their Order; and which *Sermons* of his, and likewiſe his Books writ for it were with great heat impugned in *Print* by Mr. *Gilleſpy* a *Divine* of *Scotland*, and one of the *Commiſſioners* in *England* for that Kingdom: and who in a Printed *Sermon* of his Preach'd before the *Houſe* of *Lords*, doth call *Eraſtus* **the great Adverſary**; and in one of his *Pamphlets* againſt Mr. *Coleman*, call'd *Nihil Reſpondes*, mentions how *the Presbyterians and Independents were both equally intereſſed againſt the Eraſtian Principles.*

And as to the greatneſs of the number of the *Covenanters* out of *Parliament* that rejected the *Jure-divinity* of the *Scots* ruling *Elders*, Mr. *Coleman* gives us his Judgment in *p.* 12. of his *Reply to Nihil Reſpondes*, viz. that $\frac{2}{10}$ *of the Aſſembly, and* $\frac{200}{1000}$ *of the Kingdom denyed a Ruling Elder to be an inſtituted Officer* jure divino.

But *Heylin* having told us in his *Hiſtory of Presbytery*, That *Presbytery did never ſetle its Lay-Elderſhip in any one Pariſh in* England: we may eaſily thence ſuppoſe the *National* Violation of that National *Covenant*, without any apparent regret of Conſcience on that account.

How all the *Independent* Clergy and Layety who had took the *Covenant* did in a manner *ſimul & ſemel* moſt notoriouſly violate it, in ſetting up the *model* of their Church-Government is not unknown.

But indeed, as the very ſagacious *Author* of the *Book* call'd, *The main Points of Church-Government*, &c. Printed in *London*, A. 1649. hath obſerv'd, *The known ſenſe of the Scotiſh Nation which framed the Covenant, and for whoſe Satisfaction the Covenant was here taken, doth include Independency under the name of Schiſm, or at leaſt under thoſe words contrary to ſound Doctrine; and our Independent Divines could not but know this to be their ſenſe of it, and yet we know of none that did proteſt againſt it, or explain themſelves otherwiſe at the firſt taking of the Covenant, if they have done it ſince.*

And I might further tell you, that after the **Engagement** was ſet up of being *true and faithful to the Common-wealth of* England *as it is now Eſtabliſh'd without a King or Houſe of Lords*; tho ſeveral of the Presbyterian

Divines out of a ſenſe of their *Oaths* and *Allegiance*, and their *Covenant* were ſo *Loyal* as to refuſe it, I have not heard of any of thoſe Independent ones who did.

But ſuch was the Inundation of Practical Atheiſm in the Kingdom that our Civil Wars had caus'd, that when the *Engagement* was ſet up, almoſt the whole Body of the *Lawyers* in *England* took it rather then they would loſe their *Practice*. Theſe men knew the meaning of the *Acts* of *Parliament* containing the *Oaths* of *Allegiance* and *Supremacy*, and yet were abandon'd by a diſloyal *Sophiſtical* Principle of *the want of Power in a lawful Sovereign to protect them, abſolving them from their Obedience*, to cancel their *Oaths* in the Court of Conſcience.

And in a word further to ſhew you how the tender *Regard* of publick Promiſes was here grown one of *Pancirol*'s *loſt things*, I ſhall tell you, that tho in the Parliament of *Richard Cromwell*, none was allowed to ſit but he who had firſt took a *Recognition* of *engaging to be true and faithful to the Lord Protector*, &c. *and not to propoſe or give any Conſent to alter the Government as 'tis ſetled in one ſingle Perſon and a Parliament*, yet the *Republicans* in that *Parliament* were not in the leaſt diverted by that *Recognition* from endeavouring there to *alter* the *Government*, and it was there *avowed* by them, that *a Promiſe or Oath took without Doors, did not bind within.*

And at laſt to bring up the Rear of mens Perjury, after all the *Oaths* legal and illegal had been ſo much confounded, when the late King's Reſtauration was almoſt in ſight on the then General *Monk* with his *Army* coming to *London*, a new *Oath* of *Abjuration* of the *Royal* Line was at that time ſet on foot in Councel, and which ſome there would have had impoſed on the *General* himſelf.

A. Good God! What a *Concatenation* of *Perjuries* was our Land ſo long enſlaved with? you have referr'd to the *Solemn League* and *Covenant* for extirpating *Popery* and *Superſtition*, and while *a General Aſſembly*, and *Parliaments* were planting here the Doctrine of the *Council* of *Lateran*, namely the *Abſolving* Subjects from their *Oaths* of *Allegiance*.

B. And while they were planting a *Diſcipline*, that Archbiſhop *Whitgift* in his *Reply* to *T. C.* p. 299. 559. and Biſhop *Hall* in his Book of *Epiſcopacy*, Part 3. p. 34. and Biſhop *Downham* in his *Defence of his Sermon*, *l.* 1. *c.* 8. *p.* 139. And Archbiſhop *Bramhal* in his *Fair warning to take heed of the Scotiſh Diſcipline* almoſt throughout, do charge with *POPERY*; and where the laſt *Archbiſhop* doth repreſent the *Covenant* with the terms of **Baal**, **Baal berith** and **Baalims**, and ſaith, *It were worth the enquiring whether the* **marks of Anti-Chriſt** *do not agree as eminently to* **the Aſſembly general of Scotland**, *as either to the* **Pope** *or to the* **Turk**. *This we ſee plainly that they ſpring out of the Ruines of the Civil Magiſtrate:* **they ſit upon the Temple of God**, *and* **they advance themſelves above** *thoſe whom the Scripture* calls **Gods**.

A. That *Archbiſhop's* ſaying, *It were worth the enquiring* thus concerning that *general Aſſembly* as then uſed, is the only thing wherein I differ from him, for I think there is no doubt in the caſe.

B. To this you may add the thoughts of their being aſſociated againſt Superſtition, while they were planting the groſſeſt *Superſtition* that any Age hath known, if we may take our meaſures of Superſtition from that *definition* of it in the *Reformatio legum Eccleſiaſticarum*, viz. *Superſtitio cultus eſt ad Deum relatus, immenſo quodam proficiſcens humano Studio, vel animi certâ propenſione quam vulgò bonam intentionem vocant*, &c.

Let

Let any one consider, how after the beginning of the *Parliament* of *Forty*, they had obtain'd in the very *Act* that took away the *Ship-money*, that all the *Particulars* prayed or *desired* in the *Petition* of *Right* shou'd be *enacted*; one whereof was, That *no Oath should be imposed on the Subjects that was not established by Act of Parliament*, and how in *despite* of that *Law*, they without any such *Act*, out of a blind *Zeal* for *Religion*, *imposed* this dreadful *Oath* on the People: Let any one but read over *The Covenant with a Narrative*, and the *Speeches* of Mr. *Nye* and Mr. *Hendersham* at the time of the Solemn *Reading*, *Swearing* and *Subscribing* of the *Covenant* by the *House* of *Commons*, and *Assembly* of *Divines* in St. *Margaret's* Church, and observe in Mr. *Nye's Speech*, his Saying, that ASSOCIATION *is of Divine offspring*, and his resembling of this *Covenant to the Covenant of Grace*, and the matter of it there represented by him as *worthy to be sworn by all the Kingdoms of the World*, *as a giving up of all those Kingdoms to Christ*; and where it followeth, *yea, we find this very thing in the utmost accomplishment of it, to have been the Oath of the greatest Angel that ever was, who setting his feet on two of Gods Kingdoms, the one upon the Sea, the other upon the Earth, lifting up his hand to Heaven, as you are to do this day, and so Swearing*, Rev. 10. &c. and consider how he there makes this Oath to be the most effectual means for the ruining *Popery* and *Prelacy*, and leaves it to be consider'd, whether, *seeing the preservation of Popery hath been by Leagues and Covenants, God may not make a League and Covenant to be its Destruction*, after he had before-mention'd the *Associations of the Religious Orders and Fraternities, and the Combination by the* la Sainte Ligue *for the muniting of Popery*, as incentives to this League; and how he doth again go to the *Magazine* of the *Apocalypse* for some *Weapons* for this *Covenant*, and hath other *artillery* for it from the *Jewish* State, citing the words of the Prophet, **Let us joyn our selves to the Lord in a perpetual Covenant that shall not be forgotten**, & how according to the *ratio nominis* of *Superstition*, viz. of mens over-importunate *Prayers* that their *Children* might out-live them, he concludes with a devout *Prayer*, that this *Covenant* may *out-live* **their Childrens Children**; and let any one behold in Mr. *Henderson's* Speech the like flame of *Enthusiastick* Zeal (or of the *Superstition* **quam vulgo bonam intentionem vocant**) *against Superstition* and *Idolatry in Worship*, &c. and concluding it with his belief, that the weight of that *Covenant* would cast the balance in our *English* Wars; I say let any one consider all this, and tell me if ever he saw a more pompous *Scene* of *Superstition*, and more magnificent *Procession* bestow'd on it, and contrived as Bishop *Sanderson's* words are in his *Lecture*, *De bonâ intentione* (and having his eye on that *Covenant*) viz. **Obtentu gloriæ Dei, reformandæ Religionis, propagandi Evangelii, extirpandæ superstitionis, exaltandi regni Domini nostri Jesu Christi**; and if ever he saw what the *Bishop* in that *Lecture* calls *The Jesuites Theology*, viz. **Omnia metiri ex Commodo Sanctæ matris Ecclesiæ**, more strongly asserted then in the *Contexture* and *Imposition* of that *Covenant*.

But those two *Divines* lived to recover their *Allegiance*, and a due sense of their *Oaths* for it, and to see that *fœtus* of their *Brain*, that at its solemn *Christning* they wish'd *immortality* to, renounced publickly as a *spurious* Birth; and to the Scandal of that Age, a race of other *Oaths* in *England* as infamously born, intercept its inheritance.

Nay, let me tell you, that in the *Nation* of *Scotland*, Loyalty hath been a growing **Plant of Renown** since the year 1660. and the **Idol** of their former Covenanted Presbytery been by the Loyal Nobility and Gentry and Populace there generally abhorr'd. And tho Sir *George Wharton* in his

Gesta

Geſta Britannorum relates it as a ſtrange thing that on the 21*ſt* of *Auguſt*, A. 1663. *the Parliament of* Scotland *Paſs'd an Act for a National Synod, the firſt that ever was in that Kingdom under the Government of Biſhops*; yet I can tell you of an *Act* of *Parliament* that paſs'd there afterward, that declared the right of the *Crown* to diſpenſe in the external Government of the *Church*.

I ſhall entertain you with it out of the *Scotch* Statutes, *viz.*

In the firſt Seſſion of the Second Parliament of King Charles *the Second, there paſs'd an Act aſſerting His Majeſty's Supremacy over all Perſons, and in all Cauſes Eccleſiaſtical.*

Edenburgh, November 16th 1669.

The Eſtates of Parliament having ſeriouſly conſidered, how neceſſary it is, for the Good and Peace of the Church and State, That his Majeſty's Power and Authority, in relation to Matters and Perſons Eccleſiaſtical, be more clearly aſſerted by an Act of Parliament; Have therefore thought fit it be Enacted, Aſſerted and Declared, Like as his Majeſty, with Advice and Conſent of his Eſtates of Parliament, doth hereby Enact, Aſſert and Declare, That his Majeſty hath the Supreme Authority and Supremacy over all Perſons, and in all Cauſes Eccleſiaſtical within this his Kingdom; and that by virtue thereof, the Ordering and Diſpoſal of the External Government and Policy of the Church doth properly belong to his Majeſty and his Succeſſors, as an inherent Right to the Crown: And that his Majeſty and his Succeſſors may Settle, Enact and Emit ſuch Conſtitutions, Acts and Orders, concerning the Adminiſtration of the External Government of the Church, and the Perſons employed in the ſame, and concerning all Eccleſiaſtical Meetings and Matters to be propoſed and determined therein, as they in their Royal Wiſdom ſhall think fit. Which Acts, Orders and Conſtitutions, being recorded in the Books of Councel and duly publiſhed, are to be obſerved and obeyed by all his Majeſty's Subjects, any Law, Act, or Cuſtom to the contrary notwithſtanding. Like as his Majeſty, with Advice and Conſent aforeſaid, doth Reſcind and Annul all Laws, Acts and Clauſes thereof, and all Cuſtoms and Conſtitutions, Civil or Eccleſiaſtick, which are contrary to, or inconſiſtent with, his Majeſty's Supremacy, as it is hereby aſſerted, and declares the ſame void and null in all time coming.

A. You told me before how the King *diſpens'd* with the *five Articles* of *Perth*, ſetled by *Act* of *Parliament*; but this *Act* yields ſo great a *territory* to the *Diſpenſative* Power, that my thoughts cannot ſuddenly travel through it. It acknowledgeth in the Crown a more ſublime Power then of diſpenſing with *Presbyterians* or *Independents*, or of *ſuſpending* the *Penal* Laws againſt them, namely of aboliſhing *Epiſcopacy*, and of making *Presbytery* or *Independency* the *National* Church-Government.

Car tel eſt notre plaiſir now for the *external* Form of Church-Government, is allow'd to make the *Pattern* in the *Mount*. And accordingly as Mr. *Baxter* in his *Book* call'd a *Search for the Schiſmaticks*, repreſents Archbiſhop *Bramhal's* new *way* of *aſſerting* the *Church* of *England* in his *Book* againſt him, 1. *To abhor Popery.* 2. *That we all come under a foreign ſpiritual Juriſdiction, obeying the Pope as the Weſtern Patriarch, and alſo as the* Principium Unitatis *to the Univerſal Church; governing by the Canons,*

Canons, &c. may not the *King* by this *Act* make the external Government of the Church of *Scotland Patriarchal*, and the *Pope* Patriarch?

B. The *Act* needs no Comment: and if you will tell me that the *Scots* shew'd themselves *Erastians* or *Latitudinarians* when they made it, I shall acquaint you that that *Archbishop* in his *Schism guarded*, p. 319. asserts, That *a Sovereign Prince hath Power within his own Dominions for the Publick good to change any thing in the external Regiment of the Church, which is not of divine Institution*, and that he had in *p.* 4. of that Book, *allow'd* the Pope his *Principium unitatis*, and his *Prœheminence among Patriarchs*, *as S.* Peter *had among the Apostles*; and that in *p.* 78. of his *Just Vindication of the Church of* England, he takes *notice* that by the *Statute* of *Carlisle*, made in the days of *Edward* the First, it was declared, That **the Holy Church of** England **was founded in the Estate of Prelacy by the Kings and Peers thereof.**

But now further to entertain your thoughts with the great *Scene* of the *New Heaven and the New Earth* in that Kingdom, and of Men there *walking* at *liberty*, as the *words* in the *Psalms* are (or **at large**, as 'tis in the *Margin*, and as in the *Latin*, **indesinenterque ambulabo in ipsa LATITUDINE quia mandata tua quæro**) whose measures were before *staked* down to the Narrow *tedder* of *Presbytery*, and whose Souls were once *enslaved* to a blind Zeal for that Church-Government (as what they then fancy'd to be the *putting* the *Scepter* into *Christ*'s hand, and the only efficacious *means* to keep out *Popery*) I shall tell you that they have now put the Scepter into their *Prince*'s hand to rule the Church with what *external* Government he will, who were formerly so ready to *enslave* both *Kingdoms*, by designing to put the Royal Scepter of *Scotland* into the French King's hands, and to bring a Popish *French* Army into *Scotland* to *enforce* the *setlement* of *Presbytery*.

A. One would hardly think it *possible* that they should then design any such thing.

B. As the *Civil* Law rangeth things that *wound mens Piety, Reputation, or good Manners*, among *Impossibles*; so one would think those of the *Scots* then designing a thing of that Nature, to be an *Impossibility*. And any one would thus think it *impossible*, who consider'd that the *Crown* of *England*, A. 1560. sent *Forces* into *Scotland*, whereby the *French* were driven out of that Kingdom, and that thereupon in the *Publick printed Prayer prefixt to the* Scots *Psalm-Book*, it is said, *viz.* **And seeing that when we by our own Power were altogether unable to have freed our selves from the tyranny of Strangers, thou of thine especial goodness didst move the hearts of our Neighbors (of whom we had deserv'd no such favour) to take upon them the common burden with us, and for our deliverance not only to spend the lives of many, but also to hazard the Estate and Tranquillity of their Realm; grant unto us, O Lord, that with such reverence we may remember thy benefits receiv'd that after this, in our default we never enter into hostility against the Realm and Nation of** England. **Suffer us never, O Lord, to fall to that ingratitude and detestable unthankfulness, that we shall seek the Destruction and Death of those whom thou hast made Instruments to deliver us from the tyranny of merciless Strangers,** &c. But he who shall read K ng *Charles* the First's **Declaration concerning his Proceedings with his Subjects of** Scotland **since the Pacification in the Camp near** Berwick, *Printed* A. 1640. will find this *Fact* too true: and the *Letter* there likewise *Printed*, which was under the *hands* of the *Leading* men of the Presbyterian *Faction* in *Scotland* writ to the *French* King, and wherein his *assistance* is implored.

 A. But

A. But by that *Act* about the *Supremacy* in *Scotland*, A. 1669. that you read to me, I see that *the old Leaven* of *Presbytery* is there sufficiently *purged out*, and that the very *mass* of *Blood* in mens *Principles* relating to the *Regal* Power is universally *sweeten'd*.

B. You have great reason to judge so; and if you had read the *Scotch* Statutes since the *year* 1660, you would find the *Body* of that *Nation* having the *temperamentum ad pondus* for *Loyalty*.

And your having mention'd the *old Leaven* there purged away, minds me of minding you that that *Nation* having so nobly discharged its moral offices in that *Case*, ought to be *alsolv'd* in the thoughts of all the *Loyal* from the *Fact* of its former deflection from Loyalty: and that the great measures of *Christian* Charity ought to extend beyond that Judgment of *Seneca*, that *pœnitens est fere innocens*, and even as far as S. *Paul's* generous *discharge* of the *Corinthians* on their having *purged* out that *ferment*, viz. *For behold what carefulness it wrought in you, what clearing of your selves, yea, what indignation, yea, what fear, yea, what vehement desire, yea, what zeal*, &c. **In all things ye have approved your selves to be clear in this Matter.** Look on their *Acts* of *Parliament* in the time of K. *Charles* the Second, by one of which it is *declared*, That **his Majesty his Heirs and Successors, by Virtue of the Royal Power which they hold from God Almighty over this Kingdom, shall have the sole Choice and Appointment of Officers of State, and Councellors and Judges**; and by another, That the Estates of Parliament considering that **the Kings of this Realm deriving their Power from God Almighty do succeed Lineally thereunto.** And I can direct you to *another*, that contains in it so strange a *Resignation* to the *King's* measures, as may make you again wonder at the *possibility* of such a temper, and not to be equall'd by any thing I have read of. but that *pang* of *Zeal* wherewith so many once at *Cambridge* were affected for *Edward* the *Senior*, when they swore *to will what he willed*; I mean that *Act* of *Parliament* in *Scotland* An. 1661. **Concerning the League and Covenant, and discharging the renewing thereof without his Majesties Warrant and Approbation.** The Act concludes with an Inhibition, **That none presume to renew that Covenant or any other League or Covenant without his Majesties special Warrant so to do.** Thus then that *Covenant* tho by them so much *nauseated*, they shew'd themselves ready again to *swallow*, if his *Majesty* for any such reasons of State, as they could not foresee, should enjoyn them so to do.

A. You do indeed make me wonder at this great example of the tenderness and extent of loyal Obedience in *Scotland*.

B. I can tell you of another *Act* of *Parliament*, viz. the *5th Act* of the second *Session* of the second *Parliament* of K. *Charles* the *2d Edenburgh* 1670 13. *August* ~~1760~~ *The Act against Conventicles*, where their very *Zeal* against them is a *Wall* of *Fire* to guard the *Dispensative* Power. The *Act* runns thus, **Forasmuch as the Assembling and Convocating his Majesties Subjects without his Majesties Warrant and Authority is a most dangerous and unlawful Practice, prohibited and discharged by several Laws and Acts of Parliament under high and great Pains, &c. for the suppressing and preventing of which for the time to come, his Majesty with Advice and Consent of his Estates of Parliament, hath thought fit to Statute and Enact, &c. That no outed Ministers who are not** LICENSED **by the Councel, Persons not Authorized or** TOLERATED **by the Bishop of the Diocess, presume to Preach, expound Scripture, or pray in any Meeting, &c. and that none be present at any Meeting without the Family**

mily to which they belong, where any not licensed, authorized nor tolerated, as said is, shall Preach, expound Scripture, or Pray, &c.

A. The *Act* for *Uniformity* here 16 *Car.* 2. doth justice to the *Prerogative* of the Crown in *dispensing*, by taking care that the *Penalties* in it shall not extend to the **Forreigners or Aliens of the forreign Reform'd Churches allow'd or to be allow'd by the King's Majesty, his Heirs and Successors in England**, and which were granted to them with *non-obstante's* to all Acts of Parliament.

B. And the Act 22° *Car.* 2. entitled, **Seditious Conventicles prevented and suppressed**, passing in the *Parliament* of *England* in the *same* Year that the *Act* against Conventicles did in *Scotland*, and *concluding* with a *Proviso*, **That nothing therein contained, shall extend to invalidate or avoid his Majesties Supremacy in Ecclesiastical Affairs, but that his Majesty and his heirs and Successors may from time to time, &c. exercise and enjoy all Power and Authority in Ecclesiastical Affairs, &c. any thing in this Act notwithstanding**, shewed such a *Concordant* Sympathy between the *two* Realms in *tenderness* for the *prerogative* of *dispensing* with the *Penal* Laws Ecclesiastical, as is between the Strings of two distant *Lutes*, on the touching the String but of one of them. But I must tell you, that tho by this *Proviso* the benefit of the *Dispensative* Power hath been sufficiently secured to the Churches of *Forreigners* here, and the King's Ecclesiastical *Supremacy* justify'd in its power of *indulging* the Conventicles of all sorts of *Recusants*, yet as in the *Scotch* Act the Crown's *dispensing* with *Conventicles* hath been more *express* then in the *English* Act, so hath the *administration* of *Prerogative* in that kind been more tenderly and signally exercised in *Scotland*, then I have observ'd it to be in *England*. A Single

For I find in a Book call'd *A Compendious History of the most remarkable Passages of the last* 14 *Years*, &c. *printed An.* 1680. that in p. 205. the Author referring to the Month of *July*, 1677. saith, that *upon a Rebellion in that Kingdom being nipt in the Bud, his Majesty was pleas'd to publish a Proclamation*, **Commanding the Judges and all Magistrates to apprehend and punish all such as frequented any Field-Conventicles**, &c. **according to the Prescript of the Law, as also to prosecute with all Legal Rigour the execrable Murtheters of the late Arch-Bishop of St.** Andrews: **declaring withal that his Majesty being desirous to reclaim all such as had been mis-lead through Ignorance or blind Zeal, had according to the Power reserved to his Majesty by the 5th Act in the 2d Session of the 2d Parliament, suspended the execution of all Laws and Acts against such as frequent house-Conventicles on the south-side of the River Tay, excepting the Town of** Edenburgh, **and two Miles round the same**, &c.

And the truth is, it must likewise be to the *honour* of that *Nation* acknowledged that in the *worst* of Times, they after their *Covenant* did not Contract any such guilt of *Perjury* by a *superfetation* of *enterfering* Oaths, as great *Numbers* of our *Land* did: and that they were *exemplary* to *England* in *Loyalty*, and in propping up the *hereditary* Monarchy, while so many here in the *Plott-Conjuncture* were infatuated with the *Project* of the *EXCLUSION*, as to give me occasion by a *fresher* instance, and but of *yesterdays* occurrence to invite you to behold a *Spectacle* of the divine *Justice* in abandoning such Men here to the guilt of *Superstition* who used unjust means to *extirpate it*.

Such among us who had not took notice of that *English* and *Scotch* *SAINTE LIGUE*, and its being so generally exploded, and who in the late *Ferment* about *Popery* would have fortify'd an *Exclusion* with an *Association*;

ciation, and again ſet up *Aſſociation* as *of Divine-Off-ſpring*, you ſee how being wild with exceſſive *Fears* and *Jealouſies* of the growth of *Popery*, they were guilty of the *Superſtition* of *founding Dominion in Grace*.

A. Conſidering how Men here have *laughed* at the Obligation of their *lawful* Oaths, and that for unlawful *Oaths* a *Land mourns*, methinks 'tis an *adventurous* thing for a Prince to take poſſeſſion of his Inheritance of the Empire of ſuch a Land ſo *encumbred* with the guilt of *Swearing* and *Forſwearing*.

O when may we ſee that antient general *tenderneſs* in point of Oaths here, that flouriſhed among us in the days of our firſt Reformation: nay even in ſome times of our *Roman Catholick* Anceſtors!

B. I believe never, till after all the living here being reſolved to duſt, and a new Race of Mankind enriching themſelves and their Country by the Culture of the Earth and Manufactures, men ſhall be above Temptations from neceſſity, to *take* God's *Name* in *vain*; and when the very *uſe* of *Oaths* Aſſertory or Promiſſory, will be *diſpens'd* with by Nature.

I am ſure the Spectacle of mangled and ſlaughter'd Bodies covering a Field immediately after a Battle hath not more horror in it, then the ſight of the Conſciences mai'md and wounded by the inobſervance of *publick* Oaths hath been ſince the *Æra* of 41.

And as our *Chronicles* mention, that *they who were born in* England *the Year after the great Mortality An.* 1349. *wanted ſome of their cheek Teeth*, I may ſay that generally they who have been born here the *Years* after 41. wherein the *Plague* of *Perjury* by the outraging thoſe *Oaths* of *Allegiance* and *Supremacy* was ſo *epidemical*, have ſeem'd able only to *ſwallow* thoſe Oaths, but not to *chew* upon them in ſerious and conſiderate thoughts: no not at the very frequent times of their *taking them*.

And ſtill tho in *ſpeculative* Points in *England Conſulitur de Religione*; yet *conclamatum eſt* as to a general tender regard to the *Religion* of thoſe *Oaths*.

There was (I think) a want of tenderneſs in ſome as to their ſworn *aſſiſting* and *defending all the Priviledges and Preheminences belonging to the Crown*, during the late *Ferment* about my Lord *Danby*'s Pardon: and I may more ſadly reflect on the ſame Mens want of recollecting their *Oath* obliging them to the *King his Heirs and Succeſſors* at the time of the Ferment about the *Excluſion*.

A. I think that many who by repentance have been cured of the *Epidemical* Plague of *Perjury* that raged here in 41. and of ſuch a *Plague*, and another of *Fears* and *Jealouſies* ſince 81, have yet ſuſtain'd more damage thereby, then they who were born the *Year* after 1349 did in wanting ſome of their *Cheek Teeth*; and that their caſe is like that of thoſe who were recover'd of the great *Plague* at *Athens* that *Thucydides* hath deſcribed, and who tells us, that after their *recovery*, their *Souls* had loſt the faculty of *Memory*, and were *dozed* with an ἀμνησία about what themſelves had done, or what had paſſed in the World during the horror of that very *Plague*, or before or ſince. But after all this ſaid, I am to ask you if you will make all thoſe *perjured* who having took the *Oaths* of *Allegiance* and *Supremacy*, promoted the excluſion?

B. By no means. I have more Humanity and Chriſtian Charity then to do ſo. I ſhall here obſerve to you that *Divines* in their meaſures of Mens ſinful Actions do often make uſe of the *diſtinction* of *materialiter* and *formaliter*. Thus for example, *Ames* in his *Caſes* of *Conſcience* l. 5. c. 53. *Si quis falſum dicit, putans eſſe verum, mentitur tantum materialiter. Si quis verum dicit, putans eſſe falſum, mentitur formaliter.* And he having

ving before in *l.* 4. *c.* 4. viz. *Of Hereſy*, made *pertinacy* a requiſite to a man's being *formally* an *Heretick*, and ſaid that *Pertinax eſt qui non eſt paratus Captivare intellectum & rationem ſuam omnem Sacræ Scripturæ*, adds, *Hæreticus igitur poteſt eſſe quis* materialiter, *dum aſſenſum præbet errori pernicioſo, vel ex ſimplici facilitate aut temeritate hæreticis credendi qui ſub honeſtâ aliquâ ſpecie fallunt, vel ex ignorantiâ qui* formaliter *non eſt hæreticus: cum pertinacia & obſtinatio animi deeſt, atq; adeo pro ſimpliciter hæretico non eſt habendus.* Concordant with theſe meaſures of *Ames*, have I obſerv'd thoſe of ſome ingenuous *Roman-Catholick* Writers, who have declared that they will not pronounce all *Proteſtants* to be *Hereticks formaliter.*

And it is therefore no wonder that ſuch their Judgment of Charity hath been retaliated by ſome of the moſt Renowned *Divines* of the *Church* of *England*, viz. the *Lord Primate* Bramhal, *Biſhop* Taylor, *Dr.* Hammond and others, who have deny'd to pronounce the *worſhipping* the *Hoſt* to be *formal* Idolatry; that is to ſay, to be not ſo at all in reality, ſince we know that according to the *trite* Rule, *forma dat eſſe.*

And thus that *Primate* in his *Schiſm Guarded* ſaith very well for that purpoſe, *p.* 57. *Every one who is involved* materially *in a Schiſm is not a* formal *Schiſmatick, more then ſhe that Marries after long expectation, believing and having reaſon to believe that her former Husband was dead is* a formal *Adultereſs, or then he who is drawn to give Divine Worſhip to a Creature by ſome miſapprehenſion, yet addreſſing his Devotions to the true God, is* a formal *Idolater.* And having there cited S. *Auſtin* of *Hereſy*, *He who did not run into his error out of his own over-weening Preſumption, nor defends it pertinaciouſly, but receiv'd it from his ſeduced Parents, and is careful to ſearch out the truth, and ready to be Corrected if he find it out, he is not to be reputed among Hereticks*; he ſaith, *it is much more true of Schiſm, that he who is involv'd in Schiſm through the error of his Parents or Predeceſſors, who carefully ſeeketh after truth, and is prepared in his mind to embrace it whenſoever he finds it, he is not to be reputed a Schiſmatick.*

I know *Azorius* de *Juramento* gives his Judgment well *in theſi, That when a Law is changed to which a man is bound by Oath, tho he is thereby* materially *diſcharged, yet* formally *he is bound in reſpect of his will: for if ever he actually aſſents to the alteration, he is really perjured.* And ſo leaving it to ſuch who were Men of great *Knowledge* and *Conſideration*, and had *took* the *Oaths*, and were ready to *promote* a new *Law* for altering the hereditary Monarchy; to think of the danger they incurred of the formal guilt of that Crime, I have more Charity then to conclude all the raſh, and the incogitant, and the weak, and the ſeduced by the fantaſtick *Interpretation* of the *Oath*, to have been perjured.

But as about the *year* 1164. *Thomas* Archbiſhop of *Canterbury* was at a *Council* held at *Northampton* accuſed by the King of *Perjury*, and *Condemned as guilty of it*, *becauſe he had not obſerv'd thoſe Engliſh Cuſtoms that he was ſworn to* (as I find *Franciſc. Long. de Concil.* p. 806. *Col.* 1. cited for it) ſo if you have taken the *Oath* of *Supremacy*, and Sworn **to defend all the Privileges and Preheminences granted or belonging to the King, his Heirs and Succeſſors, and united to the Imperial Crown of this Realm**, and are of opinion that **one** of the **Privileges** of thoſe **Heirs** and **Succeſſors** is to **ſucceed** to that Crown as it comes to their turn according to *Proximity* of *Blood*, and by their **inherent Birth-right**, and as the *Hereditary* Succeſſion *jure Coronæ* is *ſetled* by the Common *Law* of *England*, I ſhall tell you that the Pious and profoundly Learned *Divine* Dr. *Hicks*, who hath *ſtudy'd* this *Point* as much as any man, hath in his Writings told you that having

taken this *Oath*, you could not honestly *consent* to a *Bill* of *Exclusion*, *which would have deprived the next Heir* (*and in him virtually the whole royal Family*) of *the chief Privilege and Preheminence that belong'd to him by the Common Law of this Realm*, &c.

Your Curiosity (I believe) hath led you to read over his learned *Jovian*, and to observe what he there saith in his Preface, that *some Men did pervert the meaning of the word* **Heirs** *in the* **Oaths of Allegiance and Supremacy**, *from its common and usual acceptation to another more special, on purpose to elude the force and* **Obligation** *which otherwise they must have had on* **the Consciences** *of the* **Excluders themselves.**

But it is not only the *Authority* of this single great *Divine* that I can lay before your thoughts for the rendring the *Attempt* of the *Exclusion* contrary to our Oath: but I can direct you to the censure of the *three Estates* of a Loyal *Nation*, and of His late *Majesty* in the case. For the *Oaths* in *Scotland*, binding the takers both to the King and his Heirs and Successors as ours do here, I can tell you that in the Third *Parliament* of King *Charles* the Second, *Aug.* 13. 1681. you will find the *Act* in these *words*, viz. **The Estates of Parliament considering that the Kings of this Realm deriving their Royal Power from God Almighty alone, do succeed lineally thereto, according to the known degrees of Proximity in Blood, which cannot be interrupted, suspended, or diverted by any Act or Statute whatsoever, and that none can attempt to alter or divert the said Succession without involving the Subjects of this Kingdom in Perjury and Rebellion**, &c.

I know that during the late *turbid interval* of the Nation, some *Loyal* men of the *Church* of *England* were so much *misguided*, as to think that because *de facto* Parliaments *have heretofore directed and limited the succession of the Crown in other manner, then in course it would otherwise have gone* (as the *words* in the Printed *Exclusion-Bill* were) they might therefore of *right* do so again; *notwithstanding* they *knew* that after the *Parliament* of King *James* to prevent the Right of *Succession* from *fluctuating* any more, had justly recognized and declared, **That the Imperial Crown of this Realm, and Rights belonging to the same, did by inherent Birth-right and lawful and undoubted Succession descend and come to him, as being lineally, justly and lawfully next and sole Heir of the Blood Royal of this Realm**, it did afterward by a New **Oath** of **Obedience** or **Allegiance**, oblige mens *Consciences* both to the *Crown* and the *hereditary* lineal Succession, and *notwithstanding* they *knew* that that *Parliament* had took care of continuing the Obligation of the *Oath* of *Supremacy* for the **bearing Faith and true Allegiance to the King, his Heirs and lawful Successors, and to assist and defend all Privileges, and Preheminences and Authorities granted or belonging to the King, his Heirs and Successors**, &c.

But I doubt not but the *Consciences* of the *Considerate* Loyal, now expostulating with them in the *cool* of the *day*, whether they did then *well* in being *angry* with the *Imposers* sense of their *Oaths*, and in not penetrating into the Obligations thereby incurred; and particularly in not weighing whether such who had taken those Oaths, and yet by *Projects* and *Expedients* would have *banish'd* the Heir even after he should come to be *Actual* Successor from the effects of their Sworn Allegiance, and of their Sworn *Assistance* and *Defence* of *all Privileges and Preheminences and Authorities granted, or belonging*, &c. had not visibly out-ran their Oaths, they will recollect the late dreadful want of tenderness for the observance of the same.

It will be hard for many men on a serious Self-examination to reflect otherwise on themselves, after that Sir *W. J.* himself (as the *Printed* Speeches in the *Oxford-Parliament* have it) call'd an *Expedient* of that kind *Jesuite's Powder*, and mentioned that *on the Heirs coming to the title of King, the learned Lawyers say, that by* 1. H. 7. *all Incapacity is taken away by the Possession of the Crown*, and after that another learned *Lawyer* had there said, *I owe the Duke Obedience if he be King: but if he be King and have no Power to Govern, he is the King and no King:* and had before said, That *an Act of Parliament against Common sense is void. To make a man King, and not suffer him to exercise King'y Power, is a Contradiction.*

And I am sure 'tis a Contradiction to nothing more then our Oaths.

I desire not by referring to the *breach* of those *Oaths* to touch the *tenderness* of any man's *sore* place, or to reproach him as to what he hath done for the time past; but to promote the tenderness of his *Conscience*: and that his *Conscience* may not *reproach him* for the time to come, for not *assisting* and *defending* all *Privileges* and *Preheminences* belonging to the Crown.

When I consider the noble and vigorous *Loyalty* that your self and others who were mistaken in the Point of the *Exclusion*, have since shewn in the Service of His gracious Majesty, and the great Care that you and they in the Post where you were, took in the Settlement of his Revenue, and of avoiding the *Character* of those of *Israel*, *who brought their newly anointed King no Presents*; and your readiness at his call to venture your life for the support of his Crown: and do observe in you and them a fix'd *Preparation* of *mind* for the *defence* of every *Privilege*, that is made to appear to you as *belonging* to the *Crown*, and that your Loyalty like a bone well sett is the firmer for having been broken, I account that the *Si non erasset, fecerat ille minùs*, may be apply'd to you, and that after His Majesty's Pardon and the *Series* of your Heroical Actions of Loyalty in his Service, you ought by all equal Judges, according to the Instance I mention'd before, to be absolv'd, as who *in all things have approved your selves to be clear in this Matter.*

And I believe you being one of the *Church* of *England*, the *Adherents* to which do now as generally call themselves *The Loyal*, as the Independents did once vociferate themselves to be *The Saints*, and the Principles of which Church do enjoyn Remorse and Penitence, and *rending of the heart*, and as much tenderness to any who have *disrobed* the Crown of any of its *Rights* and *Privileges*, as was in *David* when his heart *smote* him *because he had cut off the skirt of* Saul's *Garment*, and whose *Divines* do not only P. each the *Doctrine* of *Non-resistance*, but whose *Oaths* bind to it, and that of *Supremacy* binding to a positive *Assistance* of all *Privileges*, &c. your Enlighten'd Conscience will be your constant Remembrancer against any relapse.

A. I thank you for thus gently leading me by the hand to such a height of Noble thoughts relating to that *Oath*, as from whence I am able to look back with grief on my past aberrations through inadvertence, from what my Oath *obliged* me to in relation to the Support of the *hereditary* Monarchy (and concerning which *Obligation*, the *Casuistical Discussion* you sent me did sufficiently illuminate me) and to take a prospect into my duty that lies before me to *assist and defend to my Power all Jurisdictions, Privileges*, &c. *granted or belonging to the King's Highness*, &c. *or united and annex'd to the Imperial Crown of this Realm.*

I am sensible that as some vain Swearers in common Discourse, will upon their being occasionally reproved for it, be apt to swear that they did not

swear,

ſwear, and that as there are *Fools* that ſay in their Souls that *there is no God*, and that *there* is *no Soul*; ſo there is a ſort of careleſs men who having taken this great *Promiſſory* Oath, will yet by their Actions deny their having ſworn to aſſiſt and defend ſome of thoſe Privileges, and likewiſe be apt to *ſay* in their *hearts* they have not *invoked* God as *Witneſs* and *Revenger* in the caſe of that Oath, and that they are not abſolutely bound by it, or but only by their reſerved ſenſe; or as if a man repreſenting his Country, he were only to take a kind of formal Oath *in animam Domini*, and not to venture his own Soul.

But for my part, I account it as *vile* to be *perjured* in a ſolemn *Promiſſory* Oath as in a judicial *Aſſertory* one; and ſhall hereafter think my ſelf as much bound to uſe all exactneſs and tenderneſs in the recollection of my thoughts after a *Promiſſory* Oath, as every Man of Honour doth before an *aſſertory* Oath when he is a witneſs in a *Court* of Law. And I think that it is only the *multitudo peccantium* about ſolemn *promiſſroy* Oaths, as for example, about the promiſed *aſſiſtance* and *defence* of the *Privileges* of the Crown in the *Oath* of *Supremacy*, that diminiſheth the Shame and Ignominy of mens being either through corrupt affections or incogitancy (and the *craſſa negligentia* which the Law makes to be *dolus malus*) *Vacillant* or *Contradictory* in the *Series* of their *actings* promiſed, or through *lacheſſe* or ſubdolous pretences withholding their performance of part of what they obliged themſelves to do; and that keeps the *populace* from a *nauſeous* looking on them as *falſarii*, and as much as on Witneſſes produced in Courts, who in the things aſſerted by their Teſtimony are for want of precaution of thought, *varii & vacillantes* and contradictory to themſelves, and minglers of Falſhood with truth, and who conceal part of the whole truth they were to depoſe.

B. There is another thing that makes the *Moral* offices required in an Oath *Promiſſory* call for ſome kind of Conſideration, that an Oath *Aſſertory* doth not: for we are not to depoſe of *Matter* of *Law*, but only of *Fact*: but in the Promiſſory parts of the Oaths of Supremacy and Allegiance our thoughts are obliged to have regard to Matters of *Right* and *Law*. *We are to our Power to aſſiſt and defend all Privileges and Preheminences GRANTED or BELONGING to the King*, &c. *and which ARE united to the Imperial Crown of this Realm.*

A. But by this means, while you would have men keep up the *eaſe* of their *Conſciences* by ſuch *aſſiſtance* and *defence*, will not they be put to it to make their lives *uneaſy*, by buying *Law-Books*, and being *Students* of the *Crown-Law*, and of the *extent* of the *Regal* rights; a thing never intended by the Makers of the Laws for thoſe Oaths, and whereby ſuch who are to *aſſiſt* and *defend* the *Rights* of the Crown by Action in Land or Sea-Service would be hinder'd therein by Speculation?

B. No man need amuſe himſelf about any ſuch matter. Nor are our Princes, who by their *Coronation* Oaths oblige themſelves to defend all our rightful Laws and Cuſtoms, bound thereby to ſtudy the *Report-Books* of the Law concerning the Rights and Properties of their Subjects, and whereby the time of Princes would be taken up from defending them. And I ſhall tell you, that tho all men are morally bound to frame the beſt Conceptions, and make the trueſt repreſentations of the Divine Nature they can, and which by the meaſures of the *Scripture* is comprehended under our Duty of *glorifying* God; yet not to ſtudy the Controverſies between the *Remonſtrants* and *Contra-Remonſtrants* about the abſoluteneſs of the Divine Decrees, and Dominion, or whether God according to his abſolute Dominion can torment an innocent Creature.

And thus tho we are bound to honour God's Vice gerents, and to *assist* and *defend* their *Rights*, *Privileges*, and *Preheminences* we are not to consume our whole lives in the investigation of Truth in the *Moot-Points* about the same.

But as to this thing, that great *Casuist* of the Age, Bishop *Sanderson*, may help to set us right in his Third *Lecture* of *Oaths*, Sect. 17. where putting the *Case* when Subjects are required to take an *Oath for Preservation and Defence of Laws and Liberties, Privileges, Prerogatives and Preheminences of some Superior Power, as of a King, a Common-wealth, or Lord Paramount, such as are among us, the Oaths of Homage, of Royal Supremacy*, &c. he saith, *No man denies these Oaths to be lawful or obligatory: but in respect of the frequent incertainty of the Laws whereunto they relate, it may very well be doubted how far they oblige. Doubtless the Subject to his Power is obliged to defend all Rights which appear either by Law or Custom Legitimate, whether defined by the written Law, or in force through long use of time, or prescription, that is, so far as they are known, or may morally be known. But he is not equally obliged to the observation of all those which are Controverted or doubtful, especially since Powerful men are accustomed to stretch their tedders, and leap over the Land-marks of their Neighbours, not contenting themselves within the bounds of their own Right. Nevertheless a Subject ought always to be prepared in Mind so soon as the justness of those things which are doubtful shall appear, to acknowledge and defend them.*

It may be hence rationally deduced that such who are call'd to the *Helm* of *State*, or are *Members* of *Parliament*, if any Matters relating to any *Jurisdictions*, *Privileges*, and *Authorities* granted or *belonging* to the Crown shall come in question before them, are by *virtue* of the *Oath* of *Supremacy* bound to endeavour to know whether those Jurisdictions, Privileges, and Authorities are *granted*, or *do* belong to the Crown, that is, *so far as they are known or may morally be known* before they refuse to *defend* and *assist* them: and much more before they shall do any act of offending or resisting the same, and before they shall entertain any hard thoughts of their Prince for claiming this or that Privilege. And where the *right* of any *Jurisdictions*, *Privileges granted* or *belonging* to the *Crown* is not *Controverted* or *doubtful*, that *Oath* binds them immediately to *assist* and *defend* the same, and not so much as to move any thing against them, except in some such case as I shall presently mention.

A. Did ever any *Parliament* presume to destroy, or *offend* or usurp upon any *Privilege*, or *Preheminence*, or *Authority*, of which the *Right*, as belonging to the Crown, was not controverted?

B. Yes, the long Parliament of 40 did so. The *Power* of the *Militia* was acknowledg'd by the Parliaments *Petition* at *Windsor* to be *a flower of the Crown*. And therefore the Royal *Martyr*'s dying Breath might (one would think) be Thunder to their Consciences, when in his *Speech* on the *Scaffold*, he said, *I never intended to intrench upon their Privileges. They began upon me. It is the Militia they began upon. They confess'd that the Militia was mine; but they thought fit to have it from me.*

No doubt such men *intended* to entrench on the King's *Privileges* and *Preheminences*, and they *intended* to *violate* their *Oath* of *Supremacy*.

A. Did they offend any other *Uncontroverted* Rights of the *Crown*?

B. Many more then I have now time to name; but cannot forget the fatal Consequences of their outraging one of those uncontroverted Rights which was at the King's Pleasure to Prorogue or Dissolve Parliaments, by putting such *incessant* hardships on that *Pious* King to engage him to pass the *Act* that that Parliament should continue till both the Houses did con-

ſent to the diſſolution of it; and of which Mr. *Hobbs* in his *Behemoth*, ſaith, that *it amounted to a total Extinction of the King's Right, in caſe that ſuch a grant were valid, which I think it is not, unleſs the Sovereignty it ſelf be in plain terms renounced, which it was not.*

And he having ſaid, That *the King ſigned that Bill the ſame day he ſigned the Warrant for the Execution of the Earl of* Strafford, *and* having rais'd the Queſtion, *Whether the King could not have ſaved him by a Pardon*, and ſaid, *that he would have done it if that could have preſerv'd him againſt the Tumults rais'd and countenanced by the Parliament it ſelf*, doth mind me of the *horror* of thoſe days, when they who were *Sworn* to *aſſiſt* and *defend* the King's *Privilege* and *Prehemineence* in Pardoning any one, tho he knew him juſtly Condemned to dye, did endeavour by Tumults to oppoſe his Pardoning one whom he thought not to have deſerv'd Death.

That Royal *Privilege* was in like manner by that Parliament trampled on in the *Caſe* of the Pardon of Archbiſhop *Laud*.

A. I ſhall here by the way ask you if you did not once tell me that the moſt profound Obſervers of the Affairs in *Ireland*, had agreed in it as their firm Judgment, that the *Iriſh* Rebellion had never happen'd if the *Parliament* of 40 here had not meddled in the Caſe of the *Earl* of *Strafford*, and occaſion'd his removal from being chief Governour of *Ireland*.

B. I ſhall by the way anſwer you, that I did tell you ſo, and that they judged that the *Character* of that Earl's great Wiſdom and Courage, and Activity, and of univerſality in his Correſpondencies, had gain'd ſuch an *Aſcendant* over the *Genius* of the *Iriſh*, that if he had continued Lord Lieutenant of that Kingdom in his former Power, they would not have ventured to rebel.

A. You have *inſtanced* in *Uncontroverted* Privileges of the Crown that that Parliament did offend and reſiſt, by their putting ſuch *inceſſant hardſhips on their King*, as your words are; and it was folly as well as breach of their Oath for them thus to ſtrike at the *Pardoning* Power of the Crown that is the *Privilege* both of King and People. Yet let me ask you whether you account that he who in any caſe ſhall endeavour that by the Legiſlative Power any *uncontroverted Juriſdiction, Privilege, Prehemineence, or Authority granted or belonging to the Crown* may be alter'd or reſtrain'd in its exerciſe, breaks his *Oath*? Did that *Parliament* do ſo who made the famous *Act* for *barring* the known *Privilege* of *Nullum tempus Occurrit Regi*, I mean, that glorious *Act* of 21° of King *James* the Firſt, *C.* 2. of which the *Title* is, **Conceal'd Lands ſhall not be Recover'd, unleſs it may be proved that the King had title to them within 60 years**; i. e. 60 *years* before the 19*th* of *February* in the 21*ſt* year of King *James* the Firſt, which was the day of the beginning of that *Parliament*, and on which *Statute* my Lord *Coke* hath an excellent *Comment* in *Inſtit.* 3. C. 87. *againſt Concealors* (*turbidum genus hominum*) and all pretences of *Concealments* whatſoever; and on occaſion of which *Act* it is yet acknowledg'd in the Book call'd, *The Court and Character of King* James, *written by Sir* A. W. *and Printed* A. 1650. *that that King loved good Laws, and had many made in his time, and in his laſt Parliament, for the good of his Subjects, and ſuppreſs'd Promoters and Progging Fellows, gave way to the* Nullum tempus, *&c. to be confined to Sixty years, which was more beneficial to the Subjects in reſpect of their quiets, then all that Parliaments had given him during his whole Reign?*

Or did the late Kings *Loyal* long *Parliament* do ſo in their obtaining the *Act* for the *Habeas Corpus*, and others that might be named?

B. Having

B. Having *premiſed* it to you that thoſe words in the *Oath* of *aſſiſting* and *defending ALL Juriſdictions*, *ALL Privileges*, &c. are *operative* words, and of *ſtrict* Interpretation, and whereby we *ſtake* our *Eternities* to aſſiſt the King's *Temporal* Rights, and *invoke* God ſo to *help* or *aſſiſt* us as *we* ſhall *aſſiſt all thoſe Privileges*, and that the Prince and the *Church* being look'd on as *Minors*, the *breach* of an *Oath* to *defend* the *Privileges* of the *King* muſt appear to common ſenſe as odious as if any Guardian of a *Minor* did break an Oath to defend his Perſon and Intereſt, or did take part with any to deſtroy the *Minor*'s Rights; I ſhall yet be ſo fair as to tell you that I do not ſo account it: *provided* that he who ſhall do ſo ſhall have a moral certainty that the Prince being ſenſible that the *alteration* or reſtraint of ſuch *Privilege* will be very beneficial to the Subjects both in the preſent and future times, and neceſſary to the enabling them the better to ſupport the Crown, hath ſignified his deſire of the ſame, and doth ſo deſire it: or if he knoweth not his Princes ſo deſiring it, believes that the *Cogency* of the Reaſons he hath humbly to offer for ſuch *alteration* being made, is ſuch as may Incline others to *ſupplicate* the *Prince* to conſent to it, and the Prince ſo to do.

Yet in this latter caſe, if afterward the Sovereign notifies his deſire of the continuance of ſuch known *Privilege*, I am then by my *Oath* to *aſſiſt* and *defend* the ſame, and am not to the *Cogency* of my *Reaſons* to add that of *Importunity*. For there is a *par* or *proportion* between *importunity* and *force*; whence we ſee that according to the *King's* Eccleſiaſtical Laws, in caſe of a former will, a latter gain'd by *importunæ preces* in the time of the Teſtator's Sickneſs, is often adjudged void. And as I am not by *importunity* when my Princes Affairs are in a *Sickly* ſtate, or that the Die of *War* hath ran againſt him abroad, to preſs and tire him then into a parting with his known *Privileges*, ſo neither with a *Salvo* to my Oath, which binds me to *aſſiſt* and *defend* them, can I if I find his Judgment or Mind ſickly, lay Temptations before him to buy him as it were out of a *Privilege* that is juſt and adviſeable for him to keep. I am neither to *ſtarve* nor *pamper* my Prince out of ſuch a Privilege. Nay more, if my Prince did by any Error part with any ſuch *Privilege*, as not knowing the ſame to be *inherent* in the Crown (as in the *Caſe* of an Anſwer of the Royal *Martyr* drawn by one of his Miniſters not deeply vers'd in the Law, to ſome of the Parliaments *Propoſitions*, by which Anſwer he is acknowledg'd to be *one* of the *three* Eſtates) I, who know that the *Privilege* and *Preheminence* inherent in his Crown is to be *above* them all, and have in the *Oath* of *Supremacy* Sworn that the King **is the only Supream Governour**, and ſo none *Co-ordinate*, or *equal* to him, I am to take no advantage of that *error*, but am ſtill to *aſſiſt* and *defend* ſuch his *Preheminence*.

And if ever a Prince did by *fear* part with ſuch *Privilege* or *Preheminence*, there being a *par* between *fear* and *force*, according to that Law of the *Prætor* in the *Digeſts*, *Quod vi aut metu factum eſt ratum non habebo* (and in which *Law*, as *Baldus* ſaith, the *Prætor* was *inſpired* by the *Spirit* of God) I am not only not to take any advantage of ſuch act of the *Prince* done by *fear* or *force*, or to upbraid him therewith, but am ſtill to *aſſiſt* and *defend* ſuch *Privilege* ſo derelinquiſh'd by him, and am to account the ſame *belonging* to him as the word is in my *Promiſſory* Oath, and to account him ſtill in Law *poſſeſs'd* of the ſame, according to the rule of *Poſſeſſio etiam animo retinetur*: and which is juſtly apply'd in the Caſe of any one who in a *Storm* at *Sea* throws his Goods over-board to lighten the Ship.

His late Majeſty therefore did but right to himſelf, when in his *Declaration* of the 25th of *October*, 1660. *Concerning Eccleſiaſtical Affairs*, he took notice

notice *how ſome had cauſed to be Printed and Publiſh'd in* England *a Declaration before Printed in his Name when he was in* Scotland, (*i. e.* referring to the *Declaration* Printed at *Edenburgh*, 1650.) and ſaith thus of it, *viz.* *Of which we ſhall ſay no more, then that the Circumſtances by which we were enforced to ſign that Declaration, are enough known to the World: And that the worthieſt and greateſt part of that Nation did even then deteſt and abhor the ill uſage of us in that particular when the ſame tyranny was exerciſed there by the Power of a few ill men, which at that time had ſpread it ſelf over this Kingdom, and therefore we had no reaſon to expect that we ſhould at this ſeaſon when we are doing all we can to wipe out the memory of all that hath been done amiſs by other men, and we thank God have wiped it out of our own Remembrance, have been our ſelf aſſaulted with thoſe reproaches, which we will likewiſe forget.*

And it was *goodneſs* worthy the great Soul of a *King* to forget the *Outrages* of ſuch who did *ſtrip* their *Political* Father of his Power, and then *reproach* him with his *nakedneſs*.

I may here likewiſe tell you (and not *mal a propos*) how much the patience and long-ſuffering of the ſame Prince was exerciſed in a late *Conjuncture* that ſo much eclipſed his *Prerogative* in the Caſe of the *Earl* of *Danby*'s Pardon, and when the Commons did ſet up againſt it ſomewhat in his Father's Anſwer to the 19 *Propoſitions* before-mention'd, that nothing but the *tempeſt* of the Age in the *Parliament* of 40 could have occaſion'd, viz. *Since therefore the Power legally placed in both Houſes of Parliament is more then ſufficient to reſtrain the Power of Tyranny*, &c. But becauſe a Parliament ſo *perpetuated* as that was, did prove more then ſufficient to reſtrain pretended Tyranny, and real juſt Government, will a conſiderate man ſay any ſuch thing now, when the *breath* of *Prerogative* can diſſolve them in a *moment*, and in that moment *all their thoughts periſh*, and all the high-flying *thoughts* that would *ſoare* above Imperial Power be found *dead* in the Neſt?

And I may here tell you, that in the *Anſwer* of ſome Nonconformiſts to Dr. *Stillingfleet*'s Sermon (an *Anſwer* Printed in *London* in the *year* 1680. during the *ferment* about the *Plot*, and wherein they deſire *Indulgence*) I think their attacquing the *Service* on the *Gun-Powder Treaſon* Plot, in thanking God *for Preſerving the King and the Three Eſtates of the Realm aſſembled*, by ſaying, That *the late King made no ſcruple in his Anſwer to the* 19 *Propoſitions to reckon himſelf one of the three Eſtates*, was a thing that on recollection they will judge ought not to have been done.

But I am here further to tell you, that though it may be conſiſtent with our *Oath* in ſome ſuch caſe as was mention'd, to endeavour the altering by the Legiſlative Power ſome *uncontroverted* Privileges of the Crown, and in ſuch a *way* as I have mention'd, I likewiſe wiſh you in your thoughts to make a *diſtinction* of thoſe *Privileges* or *Preheminences* belonging to the *Crown*, that are abſolutely *Eſſential* to its *Preſervation*, and to that of the whole Realm, and which are by *God* and the Law put as a *Depoſitum* into the hands of *Kings*, and the removing of one of which would have the effect of taking a Stone out of an *Arched* Building, and ſuch as no Sovereign Princes can be without; and ſuch as our *Princes* have in their flouriſhing Reigns to the great content and happineſs of their People always exerciſed, and Rights (as the late Earl of *Shaftsbury* ſaid of that of the *Flagg*) that our *Princes cannot part with*: and Privileges that are not ſuch: and two of which former ſort of Privileges, and which are parts of the Fundamental Laws of the Kingdom, I account we are *expreſſy* in the Promiſſory Clauſe of that Oath Sworn to *defend*, and aſſiſt, namely of the

lineal

lineal Succeſſion to the Crown, and of the King's *Prerogative*; and of which Prerogative we have this Deſcription in *Blount*'s Law-Dictionary, That *the Prerogative of the King is generally that Power, Preheminence, or PRIVILEGE which the King hath over and above other Perſons, and above the ordinary Courſe of the Law, in the Right of his Crown:* And then adds, *Poteſt Rex ei. lege ſuæ dignitatis, condonare ſi velit, etiam mortem promeritam. LL. Edw. Confeſſ. cap.* 18. and then ſaith, *that* Spelman *calls* it the *Lex Regiæ dignitatis.*

The Author of the *Law-Dictionary* had there his eye on the Law of *Edward* the *Confeſſor*, where under the title of *Miſericordia Regis* & *Pardonatio*, it is declared, that *ſi quiſpiam forisfactus* (which the *Margin* interprets *rei Capitalis Reus*) *popoſcerit Regiam miſericordiam pro forisfacto ſuo, timidus mortis vel membrorum perdendorum, poteſt Rex ei, lege ſuæ dignitatis, condonare ſi velit, etiam mortem promeritam; ipſe tamen malefactor rectum faciat in quantumcunque poterit quibus forisfecit, & tradat fidejuſſores de pace & legalitate tenenda, ſi vero fidejuſſores defecerint exulabitur à Patria.*

And I remember there is a famous *Act* relating to the old *Privileges* and Prerogatives of the Crown and to their reſumption by the Crown, *viz.* The *Act* of 27. *H.* 8. c. 24. call'd, **The Recontinuing of certain Liberties taken from the Crown**; and it begins with ſaying, that **whereas divers of the moſt ancient Prerogatives and Authorities of Juſtice appertaining to the Imperial Crown of this Realm have been ſevered and taken from the ſame by ſundry Gifts of the King's moſt Noble Progenitors, to the great diminution and detriment of the Royal Eſtate of the ſame, and to the hinderance and great delay of Juſtice**; and thereupon ſaith, for **Reformation whereof be it Enacted by Authority of this preſent Parliament that no Perſon or Perſons**, &c. **ſhall have any Power or Authority to pardon or remit any Treaſons, Murders, Man-ſlaughters, or any kinds of Felonies, nor any Acceſſaries to any Treaſons, Murders**, &c. **or any Out-laries, for any ſuch Offences aforeſaid, committed, perpetrated, done, or hereafter to be committed, done, or divulged by or againſt any Perſon in any part of this Realm**, &c. **but that the King's Highneſs, his Heirs, and Succeſſors, ſhall have the whole and ſole Power and Authority thereof, united and knit to the Imperial Crown of this Realm; as of good RIGHT and Equity it appertaineth**, &c. and then orders all *Writs* in a County *Palatine* to be made in the King's Name, &c.

That *Statute* doth give you a *Proſpect* of great variety and uſe in order to the Settlement of your thoughts about ſome things in your *Oath*. You there ſee the Natural recourſe of the Royal *Rivers* of Prerogative to the *Ocean* from whence they came; and when you there find that the *Crown* could communicate to Subjects the exerciſe of the Prerogative of *Pardoning* Murder, however reſtrain'd by *ACT* of *Parliament*, and all the dreadful *Diſabilities* incurr'd by *Out-laries* for *Felony* and *Treaſon*, you are not to *wonder* at any ones telling you, that the *King* himſelf hath the *Privilege* of *Pardoning* a *Diſability* incurr'd by Law for *Heterodoxy* in Religion: and eſpecially when you ſhall ſee the whole and ſole Power of Pardoning the ſame *united* and *knit* to the *Imperial* Crown of this *Realm*, as of *GOOD RIGHT* and *EQUITY appertaineth*. And according to thoſe words in your *Oath* about your *defending* all the *Rights* and *Privileges united* and *annex'd to the Imperial Crown of this Realm*, you are to *defend* that great Royal Power of Pardoning, and which our Anceſtors in *Harry* the 8th's time thought ſo eſſential to Publick Juſtice.

And therefore you will ſtill do well to remember that your ſworn *defence* and *aſſiſtance* of *all* the *Privileges* and *Preheminences* of the Crown doth more particularly bind you in the Caſe of theſe *fundamental* ones to put no *hardſhip* on our *Princes*, nor yet to uſe any ſoftneſs of *Allurements* to tempt them to renounce them. The Countryman, who being by his *Phyſician* preſcribed ſome *Grains* of *Laudanum*, and deſiring a greater quantity of the *Apothecary*, and ſaying, *Shall I have no more for my Money?* and whereby he would have been *Poyſon'd*, was not leſs Sagacious then ſuch Senators who by *Subſidies* would engage any Prince to part with ſo much of his *Prerogative* as wou'd deſtroy the *Body* politick.

Alas; as for ſeveral *uncontroverted* Rights of the Crown of an *inferiour* Nature, as our Princes have been ready enough in all Ages to part with them for the good of their People, and their own promoted thereby, and have had grateful returns from their Parliaments by *Subſidies* on ſuch an account, ſo none need fear but that in all future times ſucceeding Monarchs will that way be as indulgent as the former ones were; and that as *Solomon* ſaith, *the King himſelf is ſerved by the Field*, and the *Plough* having here variouſly ſupported the *Throne*, and particularly by the robuſt *Infantry* it hath yielded to ſerve the Crown in Arms; the *keeping up* of the *Spirits* of our *Yeomen* (and likewiſe of thoſe who *Plough'd* the *Sea*) by the *Liberty* our Laws allow'd them, and the *Crowns* being no *gravamen* to the Body of the People, and only to the Royal Heads that wore it, was and will be always neceſſary in order to the *keeping up* the *being* of the *Nation*.

There is therefore *ſcope* and encouragement enough in *England* for a man who is a *Candidate* for a *Patriot*'s place, to carry it by being a Confeſſor of *unmercenary* Loyalty, and arriving at honour, or the *conſentiens laus bonorum* by being a Loyal Patriot: and there is as good popular *air* for any one to feed on who will aſſert the juſt Liberties and *Privileges* of the *Engliſh* Subjects as any *Greece* or *Rome* afforded: and there was no need for any one to move for a *Statue* for the *Hero* who promoted that old *act* againſt old *Concealments* in King *James* the Firſt's time, or the *late* one for the *Habeas Corpus*; for ſuch an one muſt find his *Monument* in the *Hearts* of all the Subjects of *England*. Nor was there ever *Prince* more Cordially and Paſſionately concern'd for the *Liberties* of the People of *England* then the *Royal* Martyr: and who fell *reverâ* as their Martyr according to his *words* on the *Scaffold*, and where he ſaid, *If I would have given way to an Arbitrary Power, to have all Laws changed according to the Power of the Sword, I needed not to have come here.*

His *ſtyle* could not there *recede* from that of his *Printed* Declarations, and in one of which, for Example that in 41. he thus mentions his hopes, *viz.* That **God will yet make us a great and a glorious King over a free and a happy People.**

A. If you had not thus *coupled* the *LOYAL* Man and the *PATRIOT* together in your Diſcourſe, I ſhould have ask'd you whether you would have Men throw up the many good Laws that the *Parliament* of 40 obtain'd for the eaſe of the People by partly importuning the King?

B. I aſſure you, I ſhall never give you or any one elſe cauſe to think that I have not a high value for ſome of thoſe Laws: and do now ſhew you my value of them, by telling you that I do not look on them as the offſpring of any factious *importunity*, but as the juſt and natural iſſue of the goodneſs of our Prince: and you will find they were ſo, if you conſult the *Declaration* I laſt cited, and where his never to be forgotten words are, *viz.* **That as We have not refuſed to paſs any Bill preſented to Us by Our Parliament for redreſs of thoſe Grievances mentioned in the Remonſtrance,**

ſtrance, ſo We have not had a greater Motive for the paſſing thoſe Laws then Our own reſolution (grounded upon our Obſervation, and underſtanding the State of Our Kingdom) to have freed Our Subjects for the future from thoſe Preſſures which were grievous to them if thoſe Laws had not been propounded. which therefore We ſhall as inviolably maintain, as We look to have Our own Rights preſerved, &c.

And in his *Declaration* of *Auguſt* 12. 1642. he ſaith, Would men enjoy the Laws they were born to, the Liberty and Property which makes the Subjection of this Nation famous and honourable, with all Neighbouring Kingdoms? We have done Our part to make a Wall of Brass for the perpetual defence of them, while theſe ill Men uſurp a Power to undermine that Wall, and to ſhake Foundations which cannot be pulled down, but to the Confuſion of Law, Liberty, Property, and the very life and being of Our Subjects.

A. You have named then two *fundamental* Privileges or Rights of the *Crown*, which by the *Oath* of *Supremacy* we are bound always to *aſſiſt* and *defend*. And I am to tell you *frankly* and without going to *hide my Tranſgreſſion*, as did *Adam*; that though I have often and in ſeveral Capacities took that *Oath*, yet on the very day I laſt took it, and while the very *echo* of thoſe words, *ſo help me God*, was audible in the air of my mind, and before the *Ink* was quite dry that recorded my *Oath*, I without conſidering that as 'tis the *Privilege* of our Prince that his *Heirs* by the Right of the Crown ſhould ſucceed him, ſo it is the great Privilege of thoſe *Heirs* to ſucceed; I was yet ſo far from *aſſiſting* and *defending* that *Privilege*, that I immediately endeavoured to ſubvert the ſame, and tho my Prince's Mind was notify'd to me for my not ſo doing. Nay, further to make you my *Confeſſor*, I was ſo far gone in a *Lethargick* careleſsneſs of my *Oath*, that when I ſaw the *excluding* the title of the Lawful Succeſſor was not likely to paſs into a *Law*, I was tempted to endeavour by *Expedients*, as if I had took *an Oath and no Oath*, to make him *a King and no King*. And God having *given* me *ſpace to repent* of my paſt *incogitancy* in relation to that *Oath*, it being now brought before me in the Courſe of Providence to *aſſiſt* and *defend* another of the *Preheminences* which my *Prince* tells me is *granted* and *belonging* to the *Crown*, and which you have mention'd as his *Prerogative above the ordinary Courſe of the Law*, in the *Right* of his *Crown*, and that he firſt made uſe of an emergent Neceſſity, I will through the *Divine* aſſiſtance *uſe* all the *means* I can both of ſerious ſedate and unprejudicate Conſideration, and of the *Conſilium Peritorum*, and Diſcourſe and Communication with others whom in *meekneſs* and *lowlineſs of mind*, I am obliged to *eſteem better then my ſelf*, to fix my own *Judgment* of *Diſcretion* in this matter: and will not deny to *aſſiſt* and *defend* this *Preheminence* of my Prince in particular without being *morally* certain that it is not *granted* or *belongs* not to him, and will take the beſt care I can to effect that by any that by any *lacheſſe* or *omiſſion* of the great Duty of *Conſideration*, I may give no man occaſion again to exerciſe his Charity in not pronouncing me to be *formally* perjured; and that after my *Prince* hath pardon'd me my attempted *excluding* him from the Throne, I may not endeavour the *diſabling* him from any one of his *Rights* while he is on it (for ſo the *ſtyle* of the *Excluſion-Bill* ran, and it might have been as well call'd the *Diſabling* Bill, according to the words there, *ſhall be Excluded and* DISABLED, *and is hereby Excluded and Diſabled*, &c. *from all Titles*, *Rights*, *Prerogatives*, &c.) and rights that I have ſworn to defend.

The Lord Chief Juſtice *Vaughan*, (who was a man of the *firſt-Rate* Talents, if you conſider both his natural and acquired parts) doth yet in *Thomas* and *Sorrell's Caſe* in his *Reports* call the *King's* Power of Diſpenſing, *dark Learning*, and ſaith it *ſeem'd ſo to him*, tho after ſo many *Arguments* in the Caſe. And as that great Man found it *dark*, ſo I think he left it ſuch in ſome meaſure, however yet ſo many daring *Scioliſts* (and who never look'd on a *Law-Book* in their lives) will pretend to *Omniſcience* in the Matter, and perhaps out of a vain Jealouſie of the King's *Omnipotence* being thereby aſſerted.

But I know your thoughts have travail'd far in this *dark Learning*, and wherein you confeſs'd to me once, that you had receiv'd ſome *Illumination* from that *Judge's* Argument, and as likewiſe you had from a Manuſcript *Report* of that *Caſe of* Thomas *and* Sorrell, containing an account of the things urged by the other *Judges*, and by the *Councel* concern'd in that Caſe, and which are not mention'd in Sir *J. Vaughan's Report* of it, and where he relates little but his own Argument. He was a fair Reaſoner and frank Diſcourſer on all occaſions, and not *byaſſed* by any mercenary humour: and according to that Candour you have often commended in him, and which I have likewiſe experimented in your ſelf, let me now again make uſe of it in your imparting to me your thoughts in order to the Directing and Setling of mine as to the obſervance of my Oath in this particular.

And tho I know we live in *a crooked and perverſe Generation*, wherein ſo many are at the ſame time decrying both *ſummum jus* and Perſecution, and too all relaxation of the Laws; and their *Spirits* lie like that *Haven*, Acts 27. 12. *toward the Southweſt and Northweſt*, two *oppoſite* Points, (and one would ſcarce think it poſſible that mens Spirits could be ſo extremely *winding* and *crooked*, and thus *oppoſite* to themſelves) and while too they are crying out that any *Diſpenſing with the Laws eſtabliſh'd*, is *Contradictio in adjecto*: yet that *Lord Chief Juſtice's Report* hath ſhew'd me the *legality* of the *Diſpenſative* Power in many particulars, ſo far as to excite in me a deſire to know more of it, and to move me to *pity* the ignorance of my *Countrymen*, who thus cry out of *Contradictio in adjecto*, and not knowing what a *Diſpenſation* in *Law* means, will fall under that *cenſure* of the *Monk*, viz. *Corrigis magnificat & neſcis quid Significat*, and of that *Adage* in *Eraſmus*, *Stultior Choræbo*, who not being able to *reckon* in *Numbers* beyond *five*, would yet undertake to *Compute* the *numbers* of the *Waves* in the *Sea*, or as I may ſay in the words of S. *Paul*, *deſiring to be Teachers of the Law, underſtanding neither what they ſay, nor whereof they affirm*: yet I aſſure you the *Vogue* of the *Mobile* will no more influence my thoughts about the *Motion* of the Laws by *Diſpenſation*, then it would about the *Motion* of the *Earth*, and who would take it very ill if they ſhould be told it moves as faſt as a *Bullet* out of a *Canon*, becauſe they do not perceive it.

A late great *Philoſopher* of our Country hath told us, *That every day it appeareth more and more that years and days are determin'd by Motions of the Earth*; and another hath from the *Diurnal* and *Annual* Motion of the *Earth* endeavour'd to *ſalve* the *Flows* and *Motions* of ſome Seas, illuſtrating the ſame by Water in a *Bowl* ariſing or falling to either ſide, according to the Motions of the Veſſel: but perhaps ſhould a *Prince* in his Writings inculcate the *Philoſophy* of the *Earths* motion, the *populace* would have *Fears* and *Jealouſies* of the inſtability of the Foundations of their Houſes and Towns, and of the ſhaking of their *Property*, and as they have by *Diſpenſations*, and they would be apt to quote *Scripture* againſt ſuch *Motion:*

tion: nay, tho they ſhould be told that ſuch *Motion* would *ennoble* the *Earth* by exalting it into *Heaven*; and too as *Diſpenſations* may be ſaid to do by conducting thoſe to *Heaven* who believe *Humane* Laws *obliging* the *Conſcience*, and yet ſhall not obſerve ſome of them. But as when ever you have heretofore diſcours'd to me of *Copernicus* and *Galilæus*, and their *Hypotheſes*, you always found me an attentive Hearer, you will be ſure now much more to find me ſo while you are ſpeaking of any of my Prince's *Privileges* that I am *ſworn* to *defend*; for I am now concern'd not to ſalve *Phænomena*, but to ſave my Soul by keeping my *Oath*. And in the temper I am in, now my whole Soul is overflowed with the ſenſe of my having ſo lately through incogitancy violated that part of my *Oath* that ſo plainly obliged me to *aſſiſt* and *defend* the *Hereditary* Monarchy, I ſhall be as chearfully attentive to you while you acquaint me with any *Obligations* reſulting from my *Oath*, as I would be to any one who told me how much I owed another, and at the ſame time enabled me to pay it.

B. I ſhall be moſt ready when we meet next (which I ſuppoſe will be very ſhortly) to afford you *lumen de lumine*, in any of the few things I know about this *dark Learning*. In the mean time I ſhall obſerve to you on the occaſion of your Mentioning the *Lord Chief Juſtice* Vaughan's *Report* of *Thomas* and *Sorrell's Caſe*, that as it hath through the Divine benignity been the frequent *Method* of *Providence* to ſend into the World unheard of *Maladies* and *Remedies* in the ſame *Conjuncture* of time, and ſo likewiſe to make peſtiferous *Hæreſiarchs* and learned *Confeſſors* of the truth *Contemporary*, and further when Heaven had made many of the inquiſitive curious to thirſt after the knowledge of truth in the works of Nature, then to bleſs the World with the Diſcourſes and Writings of *Galilæus*, *Tycho-Brahe*, my Lord *Bacon*, *Gaſſendus* and *Des Cartes*, and Dr. *Harvey*, who open'd ſuch great *Springs* of real Learning as refreſh'd that noble thirſt; ſo it ſeems before the *Date* of His late Majeſty's *Declaration* of *Indulgence* in the 24th *year* of his Reign, and of the *Act* about the *Teſt* in the 25th *year* of it, and both which were likely to produce among the *Learned* ſo many *Inquiries* into the *Legality* of the *Diſpenſative* Power inherent in the Crown (and even among the *unlearned* an *Epidemical* Diſeaſe of *talking* about the ſame) it came to paſs in the courſe of Providence, that by as Learned *Judges* as ever ſate on the Engliſh *Bench*, and as Learned *Councel* as ever appear'd at its *Bar*, the *Learning* about the *Diſpenſative* Power was ventilated and diſcuſs'd in a *Series* of ſeveral *years* in the Caſe of *Thomas* and *Sorrell*.

For the Cauſe began in the King's *Bench* 18. *Car.* 2. and was there *argued* by ſome of the Great *Councel* of the Kingdom, and there again argued on both ſides by other *Councel* in *Michaelmas-Term*, in the 19th *year* of his Reign. And in *Hilary-Term* in 25. and 26. *Car.* 2. this Cauſe for the *weight* and *difficulty* of it was *adjourn'd* out of the *King's-Bench* into the *Exchequer* Chamber, and there argued by others of the Greateſt *Councel* of the Kingdom; and many *Law-Books* quoted. And the *Caſe* was afterward *argued* by all the *Judges* of *England* at ſix ſeveral Days in *Eaſter*, *Trinity*, *Michaelmas* and *Hilary* Terms, *viz.* by two *Judges* each day, and the *Judges* differ'd in ſeveral Points, and even about the *definition* or *meaning* of *Diſpenſation*. For ſo that learned *Chief Juſtice* tells you, and ſaith, That *ſome of his Brothers defined it to be* liberatio à pœnâ, *and others to be* Provida relaxatio Juris, *which* (ſaith he) *is defining an* ignotum per ignotius, *and* liberare à pœnâ *is the effect of a Pardon, not of a Diſpenſation*, &c.

Thus (as I may ſay) there was a *Circumvallation* by the Learning which concern'd *Diſpenſing*, that encompaſs'd ſome time *preceding* that *Declara-*

tion of *Indulgence* in the 24*th* year of his *Reign*, and ſome time *following* both it and the *Act* of the *Teſt*. I ſhall ſome other time perhaps entertain you with the Learned Manuſcript *Report* of the whole *Caſe*: but ſhall now tell you that during that *Series* of *years*, there was no angry motion in the *Sea* of the *Populace* occaſion'd by any thing ſaid in any of the *Arguments* that propp'd up the *Diſpenſative* Power; no, not by that mention'd in *Keeble*'s *Reports* about *Thomas* and *Sorrell*'s Caſe to have been ſaid in the *Exchequer Chamber* by *Ellis* the *King's Serjeant* (and whoſe Opinion was as *Currant* for *Sterling-Law* as any Mans of the long Robe.) *Viz. That the King may SUSPEND an Act of Parliament till next Seſſion.*

And now ſince it hath thus appear'd out of that *Chief Juſtice* his *Report*, that at leaſt a ſixth *part* of the Sworn *Judges* of the *Realm* (as he thought) were unacquainted with the *meaning* of *Diſpenſing*, I think it may paſs for a Miracle if any great number of the *mobile* did underſtand it.

But without their troubling their heads with *Law-Books*, if they would but mind their *Engliſh* Bibles, and there conſult the 12*th* of S. *Mathew*, they would ſoon forbear calling the lawful *Diſpenſing with the Laws eſtabliſh'd a Contradiction*. Our learned *Ames* on *the Prieſts in the Temple Prophaning the Sabbath and being blameleſs*, obſerves very well in his *Caſes* of *Conſcience*, l. 3. c. 17. That *Præcepta Dei ex ſuâ naturâ nunquam ita Concurrunt, ut neceſſe ſit alterum eorum propriè violare per peccatum. Quum enim præceptum aliquod minus negligendum eſt, ut majus obſervetur, minus illud ceſſat pro illo tempore obligare* (that is to ſay, is *diſpens'd* with) *ita ut qui ex tali occaſione illud negligunt, ſint planè inculpabiles, id eſt non peccent.* Matth. 12. 5, 7. And as to that in the *Chapter* of *David's entring into the Houſe of God and eating the Shew-bread, which was not lawful for him to eat*, &c. the Lord Biſhop of *London* in his *Second Letter to his Clergy*, Printed *A.* 1680. in the Paragraph about *The half Communion*, occaſionally thus obſerves with great Judgment, *That a poſitive Command of God cannot be diſobey'd without guilt, unleſs on ſome one or more of theſe grounds, either*, 1. *That God diſpenſes with it as he did with Circumciſion in the Wilderneſs. Or*, 2. *That ſome Evil greater then the Conſequence of the Non-Performance of it will certainly follow: as when David ate the Shew-bread and they that were with him: which depends on that rule of our Saviour, which tho apply'd to the Sabbath, yet extends to all other poſitive Commands, that man was not made for them, but they for man: Or laſtly, in caſe of incapacity, as the Children of Iſraels not going up to Jeruſalem in the time of Captivity.*

And there are other words in a foregoing Chapter of S. *Matthew* that are ſtill applicable to the *Phariſaical* ignorance of *ſuch as reproach DISPENSING* as unlawful, *Go and learn what that means, I will have mercy and not ſacrifice.*

But according to the Example of our Bleſſed *Lord* in *having Compaſſion on the multitude*, I think you have taken a juſt occaſion for the *pitying* ſo many of your Countrymen who in the preſent Conjuncture preſume to *exerciſe themſelves in great Matters, or in things too high for them* relating to *Law* and *State*, and who without enquiring about the *modus* of *Diſpenſing* with the *Laws* eſtabliſh'd, wherein *Lawyers* differ, cry down the thing it ſelf wholly and abſolutely as a *Contradiction* to the *lex terræ*, and in which not being ſo all *Lawyers* agree.

My Lord Primate *Bramhal* in his Book of *A fair Warning to take heed of the Scottiſh Diſcipline*, ſhewing in *Chap.* 6. (that I have before referred to) *That it robs the King of his Diſpenſative Power*, doth *wiſh any one averſe to that Power no greater Cenſure then that the Penal Laws might be duly executed on him till he recant his error.* And how *Penal* a thing by the

Laws

Laws of *Nations*, it is to *alienate* the *hearts* of *People* from the *Prince's* Government, all the great *Writers* of those Laws, and of the *Jura Majestatis* have enough shewn.

Moreover how *Criminal*, a thing of that Nature is in the *Court* of *Conscience*, our two great *Writers* of it, *Ames* and *Sanderson* have enough taught us. The *Moral* offices of *Subjects* toward their *Princes* are well set forth in *Ames* his *Cases* of *Conscience*, l. 5. c. 25. and where he saith, *Debent ex singulari reverentiâ cavere, ne temerarium judicium ferant de ipsorum administrationes* Exod. 21. 28. Eccles. 10. 20. 2 Pet. 2. 10. Jud. 8. *Fundamentum hujus cautionis est*, 1. *Candor ille qui cum erga omnes debet adhiberi, tum singulariter erga Superiores.* 2. *Difficultas explorandi fontes & causas negotiorum Publicorum.* 3. *Moderatio illa quâ leves infirmitates & offensiones tolerare debemus, & communi tranquillitati condonare.*

And Bishop *Sanderson* in his 11th *Sermon*, *Ad aulam*, shewing the *inconvenience* of *rashly judging things to be unlawful*, observes how *thereby mens affections are alienated from one another*: and saith he, *our own deceitful hearts must needs tell us, how hardly we think of those Men who do those things, we think unlawful: as for example, if we think dressing of Meat and using any recreations to be profanatious of the Lord's-Day, we must needs judg those men who do so use them, to be prophaners of the Lord's-Day*; and he further observes, *That Governours thereby come to be robbed of a great deal of that honour that is due to them from their People, both in their affections and subjection*: and saith, *if we have in our thoughts prejudged any of the things commanded by the Magistrate to be unlawful, our hearts will be sowred toward our Governours, and Men will directly, or indirectly and obliquely speak evil of them*, &c.

Mr. *Hobb's* writing of the *passions*, observes well, *That the passion whose violence or continuance maketh madness, is either great vain glory, which is commonly called Pride and Self-conceit, or great dejection of Mind, and that excessive opinion of a Man's own self for divine Inspiration, for Wisdom, Learning, Form and the like becomes distraction and giddiness: the same joyn'd with Envy, Rage, vehement opinion of the truth of any thing contradicted by others, Rage*, &c. *and if the excesses be madness, there is no doubt but the Passions themselves when they tend to evil are degrees of the same.* And therefore when we see so many *Mechanical* Persons, as to the Point of *Dispensation* in general, not allowing their own *Rule* of *Cuilibet in suâ arte credendum*, so many *Men* and *Women*, and such whom the *Law* terms *Infants*, so *rude* in the knowledge of the *Law*, and yet so *transported* with *Pride* and *Self-Conceit*, and such an *excessive* opinion of themselves for *Wisdom* and *Knowledge*, and for being *inspired* with new *light* in this *dark Learning*, none need wish them greater *Punishment* then such their *Distemper*; adding thereunto the *Pharisaical* humour they have been so much abandon'd to, namely, of their own *dispensing* with *Moral* and *Eternal* Duties, and such as I have referr'd to in *Ames* and *Sanderson*, and things in their own nature *indispensable*, and which are the *weightier Matters of the Law*, while they cry out of the *dispensing* with Positive *Rites* and *Institutions* as *illegal*.

A. There is another *punishment* too that I think we may well agree to leave them to, and that is what *Grotius cite*, out of *Plato*, viz. *pœna errantis est doceri*, but we must submit that to time; and when God pleaseth, *the heart of the rash shall understand knowledge.* And in the mean while, to the noyse of such People who wilfully shut their eyes, we will stop our ears. You may well suppose me, who have read that *Report* of Sir *J. Vaughan*, lawyer enough to *assert* and *defend* according to my *oath* the Regal

privilege

privilege of the *Diſpenſative* power in General: but as to the *modus* of it, and whether according to the *lex terræ* the Crown can *diſpenſe* with *incapacity* incurred by *Act* of *Parliament*, I am yet to learn: and am ſo ſolicitous to find out the truth therein, that I ſhall be glad if at our next meeting you will take the *ſhorteſt* way to my ſatisfaction therein, tho it may perhaps occaſion your for a while ſtriking out of the *road* of the former diſcourſe we were in.

B. You know we had made ſome entrance into the conſideration of the *promiſſory* part of the *Oath*, and of the *Diſpenſative* power, as *promiſed* to be *aſſiſted* and *defended*, and as a *Privilege* inherent in the Crown. But ſince you will have me take the *ſhorteſt* way I can out of the *words* in your *Oath*, to ſatisfy you about the *diſpenſing* with ſuch *incapacity* as you have mentioned, I muſt in compliance with your deſire refer you to the *Aſſertory* part of the *Oath*, when we meet again.

PART II

To the Right Honorable the Lord Marqueſs of *Powys*, one of the Lords of His Majeſty's moſt Honorable Privy-Council.

MY LORD,

Having in p. 57, 58, 59. *of the following Second Part occaſionally dilated on the Common Place or Notion of Heaven having ſo often made ſo much uſe of the weight of one man in the balance of Government, I eſteem'd my dedicating this Part of my Work to your Lordſhip but common Juſtice to your Character, who have been the happy Inſtrument of God and the King in making ſo many Engliſhmen happy.*

My Lord, It is but natural when the Juſt are in Authority, for the People to rejoice (as *Solomon* tells us) *and for them likewiſe to anticipate the Honours of the Prince's affording to a Perſon heroically juſt, by wiſhing them. And this is moſt properly applicable to your Lordſhip; and that in your Caſe may be ſaid what* Pliny *in his* Panegyric *mentions of* Nerva's *adopting* Trajan, *That it was impoſſible it ſhould have pleas'd all when it was done, except it had pleas'd all before it was done.*

My Lord, It was Nature that prompted them to preſage with Pleaſure the Profit that would come to them from the acceſſions of Honour to you, and whereby they knew that the height of your Power would be naturally productive of Bleſſings to them as the height of Hills and Mountains is of Springs for the benefit of the lower Earth, and of thoſe who inhabit it, and which are found wanting in Countrys where there are no Hills. And the Ancient placing of the Statues of Magiſtrates by Fountains, may be ſuppoſed to have been an indication of the Peoples valuing them as the Cauſers of what did conſole and refreſh them.

My Lord, when I conſider how much your Lordſhip and other juſt Perſons of the Roman-Catholick Communion have in the performance of the moral Offices of Natural Obedience to your Prince obliged ſo many of his Subjects by your being helpful to them againſt Oppreſſions in their Eſtates and Conſciences, I hope I ſhall not appear too ſanguine in my Conjecture of any ferment ſoon naturally ceaſing about the exerciſe of the Diſpenſative Power being a gravamen *to Property.*

My Lord, I ſhall in the former of the two remaining Parts of this my Work (and which are both ready for the Preſs) entertain your Lordſhip with ſuch a farther Aſſertion of thoſe offices of that

Obedience

Obedience *call'd* Natural, *as I believe will give no offence to any* Zealot, *or* Patriot, *and as I have hitherto took care to give none to either: For tho I think it not deniable that our Princes may by their Laws* limit *the* exerciſe *of that* Allegiance *or* Obedience, *with reſpect to* Circumſtances, *yet as no Humane Laws can legitimate the entire withdrawing of any part of the Obedience enjoin'd by the Divine Law natural or poſitive, ſo how our* Lex terræ *hath not limited the exerciſe of the Regal Power from the* Diſpenſing *with* Diſability, *as in the Caſe now ſo much agitated, I have ſhewn, and ſhall further. But I conceive it here neceſſary for me to acquaint your Lordſhip that I have been often put to it as ſpeaking* cum vulgo & groſſo modo, *and for* brevity's *ſake to uſe the aforeſaid Expreſſion of* Diſpenſing *with* Diſability, *and with Diſability* incurr'd *by* Act *of* Parliament, *that is, with what is generally enacted to be incurr'd, and SEEMS to be alike* incurr'd *by all Perſons who perform not what the Act enjoins; and which Diſpenſing with Diſability is frequently uſed in popular diſcourſe for the* pardoning *it, and for the* liberatio à pœnâ, *and as the Lord Chief Juſtice* Vaughan's *Report by me ſo much cited mentions diſpenſing to have been defined by ſome of the Judges. But to a judgment ſo vaſtly comprehenſive and profoundly penetrating as your Lordſhips, the diſpenſing with Diſability muſt eaſily appear to be properly meant of the preventing it, and the* diſpenſing *with what might* Cauſe *it* (*according to the* ſtyle *of Queen* Elizabeth's *Letters Patents*) *or effect the* actual *incurring of what will* reverâ *be incurr'd by the Perſons not* exempted *by Diſpenſation from the doing what the Law enjoins: and which will be made to appear obvious to every man's underſtanding in one of the following* Parts, *and wherein I ſhall have occaſion to ſpeak leſs* cum vulgo *and more* cloſely *and accurately of the* Nature *of* Diſpenſing, *and of its effects in either* forum, *then yet I have had.*

And now having Named that Great Queen, *I ſhall not doubt but ſince the Members of the* Church *of* England *do now under our moſt puiſſant and moſt juſt Monarch find themſelves as ſecure in the Profeſſion of the Religion by Law eſtabliſh'd as they did in her great and glorious Reign, it will upon recollection of thought appear as natural to them to hold themſelves obliged to ſhew the ſame* tenderneſs *for every branch of Prerogative, and particularly for that of the* Diſpenſative Power, *that was then ſo remarkable in* Parliament, *and throughout the Realm.*

I remaine

My Lord,

Your Lordſhip's moſt Obedient Servant,

P. P.

[37]

PART II.

B. I again bid you welcome, and am ready to go on where we laſt left off, and do not in the leaſt doubt of your welcoming any thing I can ſay to you that may import you to know in order to your *ſworn* aſſiſtance and *defence* of every *Privilege* belonging to the Crown. And I ſhall frankly tell you, that you and other Proteſtants who in a late Conjuncture did ſhew a more then *ordinary* zeal againſt Popery or *Papal* Uſurpations, ought to conſider that you have thereby put your ſelves under an *eſpecial* Obligation of *tenderneſs* for all the *rights* of your Prince, and of *hating* all *popular* Uſurpations or *diminutions* thereof, with an *exemplary* and moſt *perfect hatred*, and of thereby avoiding the being judged *hypocrites* and factious.

A. I do herein moſt fully agree with you: and that the late *zeal* of the ſame Perſons againſt *papal* Uſurpations, and for *popular* ones was a ſcandal to the Age. I remember you once obſerv'd to me, how *tender* the *Proteſtants* in the times of Queen *Elizabeth* and King *James* the firſt, were of every *Right* and *Privilege* of the Crown with the moſt *perfect tenderneſs*, while the Attaques from the *Court* of *Rome* againſt thoſe Princes had made the higheſt Ferment in the minds of the Populace. But I think there never was any Conjuncture of time here, when ſo many of the declaimers againſt Popery, and ſo many of the *fautors* of Plot-witneſſes were ſo much at the ſame time for *a Plot* and *no Plot*, and for *a King and no King*; that is to ſay, did ſo much make a ſtalking-horſe of Popery, whereby to ſtrike at Prerogative.

B. But you know that the *talk* of *Plots* and *Popery* was before apply'd to that uſe. You know *Archbiſhop Laud* in his *Star-chamber Speech*, A. 1637. mentions it p. 11. *as the ſcope of the Libellers* of the Faction *to kindle a jealouſy in Mens minds, that there were ſome great Plots in hand to change the Religion eſtabliſhed, and to bring in* (*I know not what*) *Romiſh Superſtition.* And the hiſtory of thoſe times ſheweth you how the Men that cry'd up *Plots* then did *decry* Prerogative. And in the Conjuncture of 41. the famous *Proteſtation* of *May* the 5th that year, begins with Out-cries of *Deſigns of Popiſh Prieſts and Jeſuits and other Papiſts and their PLOTS and CONSPIRACIES*, and the Preface of the *Covenant* runs on in the *ſtyle* of *bloody Plots and Conſpiracies:* But you likewiſe know the diſmal ſtate of *Prerogative* in thoſe times then occaſion'd by raiſing of thoſe falſe Alarms of *Plots*.

And I may account it as a beneficial Providence to the Age, that ſhortly after our laſt *Plot-Epoche*, *Mr. Hobbs* his *Hiſtory of the Civil-Wars* coming firſt out in print through the Licenſe of the Preſs (and having been reſerved to the detecting then the *artifices* of the Demagogues that produced the *Uſurpations* between the Years 1640. and 1660.) the Book notwithſtanding all the prejudice againſt the *Author* (whether juſt or unjuſt) being writ with ſo much ſtrength and beauty of Wit, as to make it *fly* like *lightning* round the Kingdom in ſo many Impreſſions, did then prove to many ingenious and thinking Men an effectual *Antidote* againſt the poyſons of thoſe old Artifices then again ſcatter'd in the *Preſs*, being ſo deſtructive to Loyalty as heretofore.

Sir *John Davis* in his *Report* of the *Caſe of præmunire Hil. 4. Jacobi* doth but right to the *loyalty* of Roman Catholicks and to the *genius* of the *People* of *England* when he ſaith there, *That the Commons of England may*

be an example to all other Subjects in the World, in this, that they have ever been TENDER and ſenſible of the wrongs and diſhonours offer'd to their Kings, and have ever contended to uphold and maintain their Honour and Soveraignty. And their Faith and Loyalty hath been generally ſuch (tho every Age hath brought forth ſome particular Monſters of diſloyalty) as no pretence of Zeal of Religion could ever withdraw the greater part of the Subjects to ſubmit themſelves to a foreign yoke; no, not when Popery was in its height and exaltation.

It is therefore no marvel that toward the latter end of the Reign of the late King, the very *Mobile* who had been ſo *zealous* againſt *papal* uſurpations, and ſo *fiery* in charging *ALL Papiſts* with *diſloyalty*, did upon their diſcovery of the artifices of republican deluders to put an inglorious *domeſtic* yoke on the *Monarchy*, then think themſelves obliged by the univerſality of their *loyal* addreſſes to ſhew the more *extraordinary* zeal againſt any *Popular* Uſurpations. And ſo I account it but natural to you who are made *è meliore luto*, to be ready to ſhew your moſt *conſummate* zeal for every *Privilege* of the Crown.

A. It is not poſſible for any Man to wiſh me more ſenſible of my *obligation* in this point then I really am: and the rather for that I find ſo many mens *loyalty* to be but a kind of loud *noiſy* nothing, or a metaphyſical *univerſale*, however they may fanſie it to be a *real* being: but what I know cannot *exiſt* a part from the *particular* Rights and *Privileges* belonging to the Crown being *aſſiſted* and *defended*, and from a ſerious endeavour to underſtand the truth about their belonging to it. And my *ſolicitouſneſs* to find out which in the *ſhorteſt* way poſſible and *particularly* as to the *Privilege* of diſcharging *incapacity* or *diſability* incurr'd by *Act* of *Parliament*, (as I told you at our laſt meeting) engaged me to *divert* you out of the *courſe* of your method, and whereupon you told me you would refer my thoughts to the *Aſſertory* part of the *Oath*.

B. Well: what ever *damps* I may ſee on *Engliſh* Mens *loyalty*, or degeneracy from its *nature* by the *arts* of faction a while perverting them not to *aſſiſt* and *defend* this or that *Privilege* of the Crown, I ſhall never deſpair of their coming again to themſelves: and that tho as in a *veſſel* of *Water* and *Oyl*, while any one is ſhaking it, the Water may over-top the Oyl, ſo likewiſe in their minds while ſhaken and ſtirred by Demagogues the *Oyl* of *the Lord's anointed* is not there uppermoſt; yet that through its own nature, and through the *Engliſh* good nature and their *natural* addiction to *Religion*, it will in time naturally appear to be ſo.

And now to go on without further *prefacing* on either ſide, what if I ſhould tell you that it imports you to conſider, that in in the *Aſſertory* part of the *Oath* of *Supremacy*, you have declared and aſſerted that *authority*, as *due to the King* **that was challenged and uſed by King Henry the 8th and Edward the 6th, that is, that the King under God, hath the Soveraignty and Rule over all manner of Perſons born within theſe his Realms of what Eſtate either Eccleſiaſtical or Temporal ſo ever, ſo as no other foreign Power, ſhall or ought to have any ſuperiority over them?**

A. I would then tell you, that you have mentioned ſome things to be in this *Oath*, that I remember not to be there.

B. I grant that I mention'd to you ſomethings that are not *expreſs'd* in the *Oath*, and in the form of it as it is *adminiſtred*, and was *enacted* 1 *Eliz.* c. 1. and by which *Act* the refuſers of ſuch Oath are puniſh'd with DISABILITY to bear *Office*. But in the ſame year in which that *Act* paſs'd, *Queen Elizabeth* in an ADMONITION annext to her *Injunctions*, thought

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fit to exerciſe her *Royal* authority of the *Interpretation* or *Declaration* of the ſenſe of that *Oath* enjoyn'd by *Act* of *Parliament*; and in that *Admonition* you will find thoſe words that you remember not in the *Oath* you took: as likewiſe her ACQUITTAL of all Perſons from *all* manner of *Penalties*, and conſequently of *diſability*, who took the *Oath* according to the ſenſe of it publiſh'd in her *Interpretation*. And if you conſult the Act, you will ſee that the *diſabilities* inflicted in the *Act* on the refuſers of the *Oath* are *various*. And thus then you ſee, that as ſoon as you have done taking the *Oath*, you are immediately call'd on by your Conſcience to *defend* the *Privilege* and *preeminence* of your *Prince*, viz. of *interpreting* his Laws, and of diſcharging the *diſabilities* thereby inflicted.

A. I now remember that I have read that *Admonition* of the *Queens*; but I account *Proclamations*, *Injunctions*, and *Admonitions* of *Princes* to be but *temporary* Laws, and that therefore this *Interpretation* of the *Queen's* and her diſcharging of *Diſabilities* expired with her Reign.

B. To obviate ſuch thought, I ſhall tell you that in the *Act* of the 5th of Queen *Elizabeth*, c. 1. (and by which the Refuſal of the *Oath* of *Supremacy* is puniſh'd more ſeverely then by the before-mention'd *diſability*, viz. by *Præmunire* for the firſt *Refuſal*, and by making it *Treaſon* for ſome Perſons to *refuſe* it a *ſecond* time (but *Penalties* that none ever doubted but the *Crown* might by its *Pardon* diſcharge) there is a *Proviſo* that the *Oath* (viz. of Supremacy) **expreſſed in the ſaid Act made in the ſaid firſt year, ſhall be taken and expounded in ſuch form as is ſet forth in an Admonition annex'd to the Queens Majeſties Injunctions Publiſh'd in the firſt year of her Reign, that is to ſay to confeſs and acknowledge in her Majeſty, her Heirs and Succeſſors, none other Authority then was challenged, and lately uſed by the Noble King Henry the Eighth, and King Edward the Sixth, as in the ſaid Admonition may more plainly appear.** And this too lets you ſee that the *Parliament* by thus referring to the Queen's *Admonition* did *approve* of her Power therein exerciſed, and of her having *acquitted* her Subjects from the Puniſhment of *diſability*.

A. I muſt then, I ſee, fairly grant you that by that *Parliament's* having thus perpetuated the *interpretation* of the *Oath* of *Supremacy* contain'd in *Queen* Elizabeth's *Admonition*, I am bound in Conſcience to take it in that *ſenſe*, and am perjured if I do not ſo keep that Oath; and muſt likewiſe grant that you have ſhewn how *auſpicious* that *Oath* by the Queens *interpreting* the ſame, and the *Parliament* about five years after *approving* that *Interpretation*, was to the Aſſertion of ſuch her Power; and that if any taker of the *Oath* ſhould *gain-ſay* ſuch Power, you have prepared ſuch a *Confutation* in the caſe as was uſed to the old Philoſopher who diſputed againſt *Motion*, and whom his Adverſary confuted by removing him from his place. But as you are a fair arguer, I am to take leave to tell you, That that *Parliament*, tho they approved the Queen's *Admonition* in general, did not particularly ſhew their Approbation of the Queen's Power of diſpenſing with the *Penalties* that ſhe exerciſed in that *Admonition*.

B. They did ſufficiently ſhew their Approbation of the whole; and therefore you need not queſtion their approving of its parts. But becauſe you ſeem to lay ſome ſtreſs on that Parliament's not expreſly approving *in terminis* the Queen's Power of diſcharging the *Penalties* (and one of which by the *Act* of 1° *Elizabethæ* was *diſability*) I ſhall tell you that whereas Queen *Elizabeth* had thought it expedient for the Supporting of the *Conſecration* of the *Biſhops* of the *Church* of *England* to *diſpenſe* with whatever might cauſe *Diſability*, according to her *Supream* Authority, by her *Letters Patents*, the very ſame Parliament at their next *Seſſion* did 8° *Elizabethæ*, c. 1.

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in terminis terminantibus declare their Approbations of the Queens *dispensing* with *disability by those Letters Patents*: for it having been in that *Statute* mention'd, that for the avoiding of all Ambiguities and Questions that might be objected against the lawful Confirmations, Investings and Consecrations of the said Archbishops and Bishops, her Highness in her Letters Patents under the Great Seal of England, &c. hath used and put in her said Letters Patents divers other general words and Sentences, whereby her Highness by her Supreme Power and Authority hath DISPENS'D with all Causes or doubts of any Imperfection or DISABILITY that can or may in any wise be objected against the same, &c. it follows, That all Acts and things heretofore had, made or done by any Person about any Consecration, Confirmation or Investing of any Person elected to the Office or Dignity of any Archbishop or Bishop, &c. by Virtue of the Queens Majesty's Letters Patents or Commission, &c. be and shall be by Authority of this present Parliament declared, judged and deemed at and from every of the several times of the doing thereof good and perfect to all respects and purposes: any matter or thing that can or may be objected to the contrary thereof in any wise notwithstanding.

Sir *E. Cook* in the *4th* part of his *Institutes*. c. 74. viz. *Of Ecclesiastical Courts*, takes notice how *our adversaries had made objections against our Archbishops and Bishops consecrated about the beginning of the reign of Queen* Eliz. and consequently against the *Bishops* ever since: *That they were never consecrated according to law, because they had not three Bishops at least at their Consecration, and never a Bishop at all, as was pretended, because they being Bishops in the reign of* Edward *the* 6th *were deprived in the reign of Queen* Mary, *and were not* (*as was pretended*) *restored before their presence at the Consecration. These pretences being but Cavils are answer'd by the Statute of* 8° Eliz. c. 1. *and provision made by authority of that Parliament, for the establishing of Archbishops and Bishops, both in præsenti and in futuro in their Bishopricks.*

But *Mason* in his *3d Book* c. *7th. De ministerio Anglicano*, in his answering the *objection*, hath recourse to the Queens *Patents* referr'd to by the Statute of 8° *Eliz.* and having mention'd the Queen's *dispensing* by her *supreme* authority *cum quavis causâ aut suspicione cujusvis DEFECTUS, aut INABILITATIS quæ quovis modo contra eorum consecrationem obtendi poterat*, he saith, *verba in diplomate Regio sic se habent*, supplentes nihilominus suprema authoritate nostra Regia ex mero motu & certa scientia nostris, si quid in his quæ juxta mandatum nostrum per vos fient, aut in vobis aut vestrum aliquo, conditione, statu, aut facultate vestris ad præmissa perficienda desit, aut deerit, eorum quæ per statuta hujus Regni, aut per leges ecclesiasticas in hac parte requiruntur, aut necessaria sunt, temporis ratione aut rerum necessitate sic postulante: and then adds, *unde serenissima Regina ut omnem calumniandi ansam præcidere, ipsique invidiæos obstruere posset*, &c. *DISPENSARE dignata est, siquid forte Lynceis oculis invidia, alicujus statuti vel canonis violati prætextu possit obtendere.* And then having brought in his Popish opponents objection, *Hem quid audio? Vos Pontificis maximi Dispensationes dente canino soletis arrodere, & jam nihil pudet in Actis Parliamentariis laicali magistratui, Reginæ, fœminæ dispensandi facultatem transcribere? Dispensandi inquam cum quavis causâ aut suspicione ullius defectus aut INABILITATIS, quæ incidere poterant, idque in sacris ordinibus*, he makes this *reply*, viz. *Papa aliquando dispensat nimium papaliter, sed non perinde Elizabetha. Suas tantum leges RELAXAVIT: Cum transgressio-*

nibus

nibus contra leges ſuas DISPENSAVIT. Quod Deus fixit nunquam refigere, aut reſcindere eſt molita. And there afterward to the objection; *ſi dicatur Reginam ſufficientem diſpenſandi cum illis poteſtatem habuiſſe, proferatur aliquod illius poteſtatis fundamentum, ſi non ex ſcripturâ ſacrâ, ſaltem ex Conciliis aut patribus, aut uno aliquo approbato exemplo, in toto mille & quingentorum annorum curriculo*, the *reply* is, *Nonne Principis eſt legum ſuarum rigorem res ubi poſtulat emollire? Non magno opinor opus eſt in limine ad hoc probandum*: and as to what was objected againſt a Prince's *diſpenſing* with an eccleſiaſtical *Canon*, he ſaith, *Canonum (quatenus ſunt leges Principis eccleſiaſticæ) ſummum jus, rigorem, & duritiem moderari ſpectat ad officium principis.* And then he judiciouſly confutes *Sanders* his reproaching our *Biſhops* in his *book* of *Schiſm*, with the *term* of *Parliamentarii epiſcopi*, and he referrs to the words in the *Statute* of 8° *Eliz.* that I have mention'd to you, and ſaith of them, *Omnino liquido oſtendunt Comitia Parliamentaria non conſecraſſe, ordinaſſe, vel conſtituiſſe epiſcopos aut miniſtros, ſed jam ſecundum leges eccleſiæ LEGITIME Conſecratos, & ritè ordinatos, ac Conſtitutos, pro talibus habendos eſſe DECLARASSE*, &c.

And ſo I doubt not but you mind the *words* in that *Act* relating to the Queen's *Letters Patents*, viz. *ſhall be by authority of the Parliament* (not made good, for they were ſo before, but) *declared, judged and deem'd good.*

A. I apprehend you.

B. But to return to the Conſideration of what you are on the whole matter obliged to by virtue of the *Oath* of *Supremacy* in the Caſe now before you: and herein I find that by Virtue of the Queens *interpretation* of that Oath, and the Parliaments *Approbation* thereof, that when in the *Aſſertory* part of the Oath **you do utterly teſtify and declare in your Conſcience that the King's Highneſs is the only Supreme Governor of this Realm as well in all Spiritual or Eccleſiaſtical things or Cauſes as Temporal,** you have as in the Preſence of God ſolemnly given your cordial Aſſent to, and made your moſt *Religious* acknowledgment that the *SOLE Supreme Government or Soveraignty* and Rule under God over all manner of Perſons born within theſe Realms, is in the King; and you are obliged to judge that tho the *Oath* ſpeaks of *all Spiritual or Eccleſiaſtical THINGS or Cauſes*, and the *interpretation* of all manner of *Perſons* of what Eſtate either Eccleſiaſtical or Temporal ſoever they be, yet there is no inconſiſtence between the *Oath* and the *Interpretation*, for that as a Learned man in his *Comment* on that *Oath* hath well obſerv'd, *there is no Oppoſition between theſe two, Perſons and Cauſes; the Principal object of a Law is a Perſon, and a Perſon with reſpect to his Actions, a Perſon morally Conſider'd*; and he there quotes *Suarez de Legibus*, l. 1. c. 8. ſaying, *Ad leges per ſe requiritur poteſtas in perſonam, ſecundario in Res alias*: and for that the *Aſſertory* clauſe in the *Oath* declaring the King the *only* Supreme Governor of *this* Realm, doth neceſſarily imply his being the *only* Supreme Governor of all Perſons in it.

A. But perhaps you did not take notice that probably one reaſon why Queen *Elizabeth* was willing that her *Interpretation* that related to the *Aſſertory* part of the *Oath*, I mean as to her Power over all the Perſons of her Subjects, and which was Publiſh'd in the *Admonition* after her *Injunctions*, ſhould in the aforeſaid Act in the *5th* year of her Reign be approved in Parliament, might be to ſatisfie the ſcrupulouſneſs of ſome mens Tender Conſciences, and who might thereby think that according to the Rule of *ejus eſt interpretari cujus eſt condere*, that the *Oath* of *Supremacy* enjoyn'd by Parliament 1° *Elizabethæ* could not receive an *Interpretation* but from

the *Queen* in *Parliament*, and that that Conſideration might therefore be ſuppoſed to be the cauſe of the Queens *interpreting*, being approved or *declared* good by the *Parliament* in the *Fifth* year of her Reign.

B. I ſhall tell you that as to the ſufficiency of the *Queen's* Power to *interpret* the *Oath* by her *ſole* Authority, it appears not that the *Proviſo* in the *Statute* of 5 *Eliz.* did in the leaſt ariſe from any ſuch *ſcruple*, and ſo *De non apparentibus*, &c. And here without troubling you with the Notions of the *Royal* aſſent creating the *Soul* of the *Law*, and by the words of *le Roy le veult*, after the *Body* of it hath been prepared by the *three* Eſtates and that the *three* Eſtates have nothing to do to *interpret* a *Law* that is once made, and accordingly as Sir *C. Hatton*, formerly *Lord Chancellor* of *England*, in his *Treatiſe of Acts of Parliament and their Expoſition*, tells us, That *the Aſſembly of Parliament being ended, functi ſunt officio*, and ſpeaking particularly of thoſe of the *Lower Houſe*, ſaith *their Authority is return'd to the Electors ſo clearly, that if they were all together aſſembled again for interpretation by a voluntary meeting*, eorum non eſſet interpretari, &c. I ſhall once for all obſerve to you, that our *Monarchs* when in the exerciſe of the Prerogative inherent in them, and inſeparable from them, relating to Matters of *Peace* and *War*, the *Coining* of Money, or the *Diſpenſing* in Matters Civil or Eccleſiaſtical, they condeſcend to have the ſame in particular Caſes approved or ſtrengthen'd by Parliament, are no more deprived of their *Sole* Supremacy therein, then the *Body* of the *Sun* is deveſted of its Heat and Light by diffuſing the ſame through the Air.

But I have before obſerv'd to you, that the apparent Cauſe in the *Proviſo* of 5° *Elizabethæ*, whereby the Queens *Interpretation* is Enacted, is the better to tranſmit the obligatorineſs of the Interpretation in point of Conſcience beyond her Life, and to the Reigns of her *Heirs* and *Succeſſors*, and to bind us who live now to acknowledge ſuch Power due to our preſent King over the Perſons of all his Subjects, as was in her interpretation challenged to be due to *Harry* the Eighth and *Edward* the Sixth.

I ſhall not trouble you with my Judgment about *Moot-points* of *Law* relating to the *Regal* Power of interpreting *Acts* of Parliament, and particularly ſuch wherein Oaths are founded. My Lord *Coke*, Inſt. 3 c. 74. tells us, *That an Oath cannot be miniſtred to any, unleſs the ſame be allow'd by the Common Law, or by ſome Act of Parliament: neither can any Oath allow'd by the Common-Law, or by Act of Parliament, be alter'd but by Act of Parliament*: and ſaith in the Margin, *So reſolv'd*, An. 26. El. *in the Caſe of the Under-Sheriff*. And then ſaith *the Oath of the King's Privy Councel, the Juſtices, the Sheriffs*, &c. *was thought fit to be alter'd and enlarged, but that was done by Authority of Parliament. For further proof whereof ſee the Statutes here quoted* (i. e. thoſe referr'd to in his Margin) *and it ſhall evidently appear that no old Oath can be alter'd or new Oath rais'd without an Act of Parliament.*

I have only here referr'd you to *Matters* of *Fact* in the Reign of Queen *Elizabeth*, a Reign that the Royal *Martyr* in *p.* 3. of his *Declaration to all his Loving Subjects* of *Aug.* 12. 1642. refers to with ſo much honour by ſaying, **We declared our Reſolution**, &c. **and deſired that whatſoever miſtaking had grown in the Government either of Church or State might be removed, and all things reduced to the order of the time** (the memory **whereof is juſtly precious to this Nation**) **of Queen** Elizabeth, &c. and do leave it to you to conſider how *Great* the *Power* of *Interpretation* of Laws is in it ſelf; a Power almoſt infinitely greater then the diſcharging either the Obligations of ſome Penal Laws or their Penalties *Pro hic & nunc*, and as to ſome particular Perſons, as any one will grant who hath ſeen the extent of

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the Power of interpreting in the *Canon* Law, where the *Gloſſa ad Cap. Statuimus 4. Diſtinct. 4.* gives us this Interpretation of *Statuimus: STATUIMUS* (i. e.) *ABROGAMUS.* And I can for this purpoſe tell you, that *Bartolus* in his *Tractatus teſtimoniorum* ſpeaking of the *Imperial* Power *concedendi veniam ætatis*, ſaith *Carolus quartus ſanctiſſimus & nobiliſſimus Imperator inter alia multa conceſſit, ut ego meique deſcendentes quos legibus doctos eſſe contigerit, per univerſum imperium ætatis veniam concedere valeamus, ſervatâ formâ quæ legibus reperitur inſerta*; and whereby you ſee that a Power of *diſpenſing* with *incapacity*, was by the Prince given as an *inheritance.* But none can imagine that the Power of *interpreting* Laws can be ſo conferr'd: So that therefore according to the *Rule* of Law, *Non debet cui plus licet, quod minus eſt non licere*, you need not wonder at the Prince's *diſpenſing* with *incapacity* in particular caſes, whom you have ſeen *interpreting* Laws. And you may conſider that if the *Queen* did contrary to the meaſures of Law referr'd to in my Lord *Coke*, by her *ſole* Supream Eccleſiaſtical Authority, *ſeem* to *alter* the *interpretation* of a *Statute Oath* for the better, what ſhe did found afterward its approbation in Parliament: and in fine, I leave it to you to conſider how much the Power of *diſpenſing* with any Law may be thought *Coincident* with *interpreting*, ſince as I ſhall ſome other time ſhew you at large that the *diſpenſing* with Laws, is in effect the *equitable* interpreting that in ſuch and ſuch caſes and circumſtances they were not intended, and ought not to bind, but ought to be relax'd.

And now I muſt take the occaſion offer'd me to give you a proſpect of the Queens *Diſpenſative* Power, both of the *Interpretation* of this *Oath*, and of the acquittal from *Diſabilities* that is not bounded by the *Statutes* of 5° or 8° *Elizabethæ* beforemention'd, and wherein ſhe again ſtood on the ſingle *baſis* of her own *Supreme* Authority Eccleſiaſtical, without having recourſe then to a Parliaments approbation. Mr. *Ney* in his learned Obſervations on the *Oath* of *Supremacy*, having ſpoke of the Queens *Interpretation* of the *Oath* in her *Admonition*, and of the Parliamentary *Proviſo* 5° *Eliz.* doth thus go on, *There is ſomething of Explication further* (meaning of the Oath) *in the Articles of Religion concluded in the year* 1562, *and then recites the* 37*th Article as followeth*, viz. **The Queens Majeſty hath the Chief Power in this Realm of** England, **and other her Dominions, unto whom the Chief Government of all Eſtates of this Realm, whether they be Eccleſiaſtical or Civil in all Cauſes doth appertain, and is not nor ought to be ſubject to any foreign Jurisdiction. Where we attribute to her Majeſty the Chief Government, by which Title we underſtand the minds of ſome ſlanderous Folks to be offended, we give not to our Princes the miniſtring either of Gods Word, or of the Sacraments, the which thing the Injunctions alſo lately ſet forth by** Elizabeth **our Queen do moſt plainly teſtify, but that only Prerogative which we ſee to have been given always to all Godly Princes in holy Scriptures by God himſelf, that is, that they ſhould rule all Eſtates and Degrees committed to their charge by God, whether they be Eccleſiaſtical or Temporal, and reſtrain with the Civil Sword the ſtubborn and evil doers.**

The Biſhop of Rome hath no jurisdiction in the Realm of England.

The Laws of the Realm may puniſh Chriſtian Men with death, for heinous and grievous Offences.

It is lawful for Chriſtian Men at the Commandment of the Magiſtrate to wear Weapons, and ſerve in the Wars.

Now after the *Oath* of *Supremacy* had been enjoyn'd in the *firſt* year of her Reign, and the *Admonition* annexed to her *Injunctions* was then likewiſe

wiſe publiſh'd, *viz.* A. D. 1559. and after the Parliament had by *proviſo* enacted the interpretation of the Oath, (which Parliament began the 12*th* of *January* in the 5*th year* of her reign, and from which day all things done in that *Seſſion* are to bear date) the *Articles* of *Religion* agreed on by the *Archbiſhops* and *Biſhops* of both *Provinces*, and the whole *Clergy* in the Convocation holden at *London* in the 5*th year* of her reign, and A. D. 1562. were by the Archbiſhops and Biſhops of both *Provinces* ſubſcribed the 29*th* of *January* in that year, and by the Clergy of the lower Houſe of *Convocation* on the 5*th* of *February* following, and to all which the *Queen* gave her Royal Aſſent. And in the *Articles* there was by the *Queens* Royal *Prerogative* an additional *Interpretation* probably at the inſtance of the *Clergy* given to the *interpretation*, in the *Admonition*; and in the Parliaments *Proviſo*: and the which *additional* interpretation had in it no reſpect to, nor mention of what, being in ſeveral places of the former one, might *amuſe* the *Clergy* with ſome *Fears* and *Jealouſies*, namely the *Duty, Allegiance and Bond that were acknowledged due to* Harry *the* 8th *and* Edward *the* 6th, *and the Authority that was challenged and lately uſed by thoſe Princes*; however yet that latter Clauſe is qualify'd in the Admonition. But for the 37*th Article* before-mentioned allowing the meaſures of the Royal *Supremacy* from the *Prerogatives* **given by God in Scripture to holy Princes**, whereby our *Clergy* might ſeem to have brought the Prerogative into its own proper *Element*, and theirs too (the knowledge of the Scriptures being their *profeſſion*) our *Clergy* no doubt were always thankful to the Crowns *Diſpenſative* power, and ſo exerciſed out of Parliament: and whereby they were ſecured from penal *diſabilities* either by *ſuſpenſion* or *deprivation* for not taking the Oath in the *ſenſe* of the *Admonition*.

Thus as things in their *proper* place are at reſt, the Queens *Diſpenſative* power and the *Conſciences* of the Clergy by this interpretation of the Oath were ſo much at *reſt*, that about *eight* or *nine* years afterward the ſame 39 Articles that had been by the *Archbiſhops* and *Biſhops* and *Clergy* of both *Provinces* agreed on in the year 1562. were by the ſaid *Archbiſhops*, *Biſhops* and *Clergy* again *agreed* upon, and again *ratify'd* by the Queen in the *year* 1571. the 13*th year* of her reign, and when care was taken by the Government that that *interpretation* being incorporated in the body of the 39 *Articles* ſhould be *deem'd good* in *Parliament* by the *Statute* of 13° *Eliz. c.* 12. as the other *interpretation* in the *Admonition* had been by the *proviſo* in the *Act* of the 5*th* of that *Queen*, and probably for the ſame reaſon: and as her diſpenſing with *diſability* expreſly in the 8*th* year of her reign was.

In the Act of the 13*th* of *Eliz.* reference was made to thoſe *Articles* as agreed on by the *Archbiſhops* and *Clergy* and ſet forth by the Queens authority *Anno* 1562. and the Act is entituled, *Reformation of Diſorders in the Miniſters of the Church*, and in which it was enacted, That **all ſuch as were to be ordained or permitted to preach or to be inſtituted into any Benefice with cure of Souls, ſhould publickly ſubſcribe to the ſaid Articles**; which ſhews (if you mind it) that tho the Parliament did well *allow* and *approve* of the ſaid *Articles*, yet the ſaid *Book* oweth neither *Confirmation*, nor *Authority* to the *Act* of *Parliament*. And that *Act* concerning only *Clergy*-men, tho the *interpretation* in the 37*th Article* is left to oblige the *Clergy*, yet that in the *Admonition* might concern you to ſtick to, if nothing had ſince happen'd whereby the *diſpenſative* power inherent in the *Crown*, may have given your *Conſcience* the benefit of the *interpretation* thus afforded to the *Clergy*.

But therefore I ſhall here tell you, that the *Canons* of King *James* the 1ſt. *Anno* 1603. being *confirmed for him and his Heirs and Succeſſors* are *binding* now, however it hath been objected as the unhappineſs of Queen *Elizabeths Canons*, viz. A. 1571. A. 1584. A. 1597. wanting thoſe *formal* words of *Heirs and Succeſſors*, to expire with her. And as thoſe words are in King *James*'s *Canons* ſo are the words of enjoyning *their being obſerv'd, fulfill'd and kept not only by the Clergy, but by all other Perſons within this Realm as far as lawfully, being Members of the Church it may concern them*: and tho in the firſt *Canon* there entituled, *The King's Supremacy over the Church of* England *in Cauſes Eccleſiaſtical to be maintain'd*, 'tis order'd, That *all Eccleſiaſtical Perſons ſhall keep and obſerve, and as much as in them lyeth, all and ſingular Laws and Statutes made for the reſtoring to the Crown of this Kingdom, its ancient Juriſdiction over the ſtate Eccleſiaſtical*, yet in the next *Canon* entitled, *Impugners of the King's Supremacy cenſured*, the meaſures of the King's *eccleſiaſtical* Authority being taken from the *Godly Kings among the Jews* according to the 37*th* of the 39 *Articles*, was an extending to the *Layety* the *benefit* of the *Interpretation* obtain'd by the *Clergy*, the which was in effect a *judgment* of the *Convocations*, that the purſuance of that *Interpretation* of the King's *Eccleſiaſtical* Power, and the avoiding of the *puniſhment* of *Diſability* by the uſe of that Power, was not *againſt* the *Law* of the *Land*: but the 5*th Canon*, viz. *Impugners of the Articles of Religion eſtabliſh'd in the Church of* England *cenſured*, and in which the eſtabliſhment of the 39 *Articles* is ſolely referr'd to them, as agreed on in *Convocation* in the *year* 1562. without any *notice* of the *Parliament* of the 13*th* of *Eliz.* having done any thing about them, doth more clearly ſecure to you the benefit of the *Interpretation* the *Clergy* had.

A. You have mention'd ſo many things to me relating to the *interpretation* of the *Oath* of *Supremacy* which I never knew before, that may ſeem to perplex the *Conſcience* of any one who would take it, and to expoſe it to ſuch a kind of Ordeale-Purgation *per ferrum candens*, that may make the paſſage through it dangerous to Ones Conſcience.

B. Look you to that who have taken the *Oath*, and do you conſider how far you are by the *Interpretations* that I have referr'd you to, obliged to take your meaſures in the Matter that lies now before you, as to your aſſiſting and defending the Prerogative of the *Diſpenſative* Power: and I likewiſe recommend it to you to obſerve how much to the ſatisfaction and eaſe of the minds of the generality His Majeſty's *Lay-Subjects*, he by *Connivence* hath *diſpens'd* with their not troubling themſelves to ſtudy the *Duty*, *Bond*, or *Allegiance* that was acknowledged to be *due to Henry* the 8*th*, or *Edward* the 6*th*, or the *Prerogative given by God to Godly Princes in the Scripture*, *or the Chriſtian Emperors* in the *Primitive* times: for however our *Divines* are by the 39 *Articles* and the *Canons* of King *James*, and King *Charles* the Firſt particularly obliged to *ſtudy* theſe Points, and that the knowledge of the ſame may oblige Men of *learning* and *leiſure* among the *Layety* to Conduct their *Conſciences* thereby in their obſervance of this *Oath*, yet His Majeſty's not *reviving* among all his Subjects by any *Proclamation* or Eccleſiaſtical *Injunction* or otherwiſe, the *notices* of theſe forgotten things, cannot but be acceptable to the generality of them as a *Diſpenſation* by *Connivence*. And therefore in *Complaiſance* with, and gratitude to him, they are by the Law of Nature bound to give him what is plainly his *Due*, according to the plain *Oath* tender'd to and taken by them, and to take care that they do not exerciſe an Illegal Power of *diſpenſing* by way of *Interpretation* of that *Oath* to the Subverſion of the ſenſe of the Aſſertory and Promiſſory parts of it; both which are the Supporters of the Royal Diſpenſative Power.

But reſerving for ſome other time my thoughts relating to the *Diſpenſative* Power exerciſed by the Godly *Princes* in Holy *Scripture*, and by the Chriſtian *Emperors*, I ſhall deſire you now to look on your Oath in the plain natural ſenſe of it, and as much as if no *authoritative* one had ever been given of it. Conſider, that when you declare the *King* is the *only* Supreme *Governor* of this *Realm*, or Governor of all Perſons in it, no *Humane* Laws can bind our *Conſciences* by any diſability Penal incurr'd from *ſerving* him. When Kings ſay there is a *Neceſſity* for our *Service*, St. *Paul* hath ſaid, **we muſt needs be ſubject to them**; and which as *Grotius* hath well obſerv'd, *implies Obedience to their Commands as well as Submiſſion to their Coercion.*

As Dr. *Donne* in his *Pſeudo-Martyr* obſerv'd well concerning the *Oath* of *Allegiance*, *All the Subſtance of the Oath is virtually contain'd in the firſt Propoſition, That King* James *IS lawful King of all theſe Dominions, the reſt are but Declarations and Branches naturally and neceſſarily proceeding from that root*, the ſame as to the *Point* we are upon may be verify'd of the *Oath* of *Supremacy*, *The King's Highneſs IS the only Supream Governor of this Realm* (not *ſhall be* by virtue of this Act) *IS SO* notwithſtanding any thing that hath been done, or is a doing, and whereby any *former* Princes ſuppoſed *de facto* conſenting to tye up his hands from Governing all his Subjects, and ranging them in their Stations in his *Service*, is out of the Caſe of your *Oath*, who have ſworn thus, that King *James* the Second *IS the only Supreme Governor*, &c.

Since therefore you have in your **Oath** acknowledged that **the King is the only Supream Governor**, and that according to the 37th *Article* of the *Church* of *England*, *He HATH the rule of all Eſtates and Degrees committed to his charge BY GOD, whether they be Eccleſiaſtical or Civil*, I will ask you, if any *Humane* Law can *diſable* any Perſons from being govern'd by him, more then it can *Children* from *honouring* their *Parents*. According to thoſe words in *Malachi*, **If then I be a Father, where is my honour? and if I be a Maſter, where is my fear**, &c. may it not be ſaid to every Subject, *while the King IS your King*, while he *is* your only *Supreme* Governor, and while he *is* your Political *Father*, will you not be *Govern'd* by him? Or in effect, will you *Govern* him by thinking to oblige him not to employ this or the other Subject, and in effect endeavour both to *diſhonour* and *diſable* him who is the *Head* of the *Community* (as it were) by *loſs* of *Member*? Will you diſhonour him who *bears the Sword* by impoſing on him your belief that ſuch a *Member* of the *Body* Politick is a *gangrened* one, and neceſſary to be cut off from ſerving the State, when he tells you he knoweth the contrary? Or will you diſhonour his Religion by ſaying that *Papiſts* are *diſabled* by their *Religion* from being *ſound* Members of the *State*, when he knoweth they are not ſo *diſabled* by it, and accordingly as Sir *William Temple* hath in his Excellent Obſervations on the *Low Countries* made it appear, *that the Papiſts there are a ſound part of the State?*

Remember that the words *only Supreme*, as apply'd to your King in the *Aſſertory* part of your *Oath* are not *Otioſa Epitheta*. You will find that our great *Caſuiſt*, Biſhop *Sanderſon* in his Seventh *Lecture* of the *Obligation* of *Conſcience* lays ſo much *ſtreſs* on thoſe *words* in your *Oath* **Only Supreme** *Governour*, as to judge him *PERJUR'D* who having *taken* the *Oath*, ſhall aſſert the *Figment* (as he calls it) of *Co-ordinate Power*. *Quid enim PERJURIUM dici mereatur, ſi hoc non ſit manifeſtiſſimum PERJURIUM, quem* **ſolum eſſe Supremum in ſuo regno Moderatorem,** *Conceptis verbis juraveris, ei parem etiam in ſuo regno poteſtatem conſtituere & agnoſcere.*

If

If you did but often enough conſider your Prince, as aſſerted in your Oath, to be *Governor* of the *Realm*, you would find in your thoughts no difficulty of allowing him the Power of Commanding *all* Perſons in it without exception to *ſerve him*. Biſhop *Bilſon* in his *Book* of *Supremacy*, p. 238. ſaith, *Though Biſhops may be call'd Governors in reſpect of the Soul, yet only Princes are Governors of Realms. Paſtors have Flocks, and Biſhops have Dioceſſes; Realms and Dominions none have but Princes*, &c. *and ſo the ſtyle of Governor of this Realm belongs only to the Prince, and not to the Prieſt, and imports a Publick and Princely regiment.* And here I ſhall take occaſion to tell you, that as the *Common* Law, *ſubjecting* the Inhabitants of this Realm to the Government of Biſhops hath not kept our *Princes* from *exempting* particular *Perſons* and *Bodies* Corporate from their *Juriſdiction*, but could not *exempt* them from being ſubject to their *Prince*, and from *obeying him*, that much leſs could any *Statute* Law do it.

It is upon the *weight* of reaſon that lyes in this *Aſſertory* part of the *Oath* that ſo many *Writers* of the *Common* Law have founded their *Aſſertion* of the *King*'s Power of *Commanding* the *Service* of all his *Subjects*, as *eſſential* to the keeping up the *Monarchy*, (or the **Rule of all Eſtates committed to him by God**, that I lately ſpoke of) and *inſeparable* from it, nor *alienable* by any *Humane* Laws. It is the *Supreme* Power of our Princes as *Governors* of the Realm, that hath always entitled them to *Preſs* men for the *Service* of the Crown by *Land* or *Sea*, and to recall both *Soldiers* and *Mariners* from the Service of Foreign Princes upon emergent Occaſions to ſerve their natural *Liege* Lord. And the Book writ by a Learned *Common* Lawyer againſt the *Excluſion*, call'd, *A Letter from a Gentleman of Quality in the Country*, &c. and Printed *A.* 1679. and ſo deſervedly extoll'd by the *Judicious* loyal, tells you in *p.* 7. and 8. that *If it ſhould be enacted by Parliament that No man ſhould honour the King, or love his Parents or Children*, &c. *ſuch an Act would be* ipſo facto *void, becauſe contrary to the expreſs Divine Command*, &c. *The Statute of* 23 H. 6. c. 8. *and ſeveral other Statutes Enact, that no Man ſhall be Sheriff of any County above one year, and that any Patent of the King to any Perſon for a longer term, tho with an expreſs Clauſe of* Non-obſtante *ſhall be void and of none Effect, and the Patentee perpetually diſabled to bear the Office. And yet notwithſtanding it is Reſolv'd by all the Judges of* England, *that theſe Acts of Parliament are void: and that the King may by* Non-obſtante *Conſtitute a Sheriff for Years, Life, or Inheritance. And what is the Reaſon which the Judges give of this Reſolution? Why, becauſe, ſay they, in expreſs words, this Act of Parliament cannot bar the King of the Service of his Subject, which the immutable Law of Nature doth give to him. For Obedience and Ligeance of the Subject, (add they) is due to the Soveraign by the Law of Nature.* See 2 *Hen.* 7. 6. v. *Calvin*'s Caſe, 14. *a.* in *Coke*'s 7th *Rep.*

We know that by the *Statute* of 4°. *H.* 4. c. 5. 'tis ordain'd, **That every Sheriff of** England **ſhall abide in proper Perſon within his Bailywick, for the time that he ſhall be ſuch Officer.** But this *Act* hath never been conſtrued to hinder the King as *Supreme* Governor and *Ruler* of *all* Perſons in the Realm from Commanding any *Sheriffs* to *ſerve* him elſewhere during their Shrievalties: nor on ſuch caſe to oblige the Sheriffs in Conſcience to obſerve the Statute by ſuch Perſonal reſidence.

Baker in the reign of King *Charles* the *firſt* tells us of an *Information A.* 1629. in the *Star-chamber* againſt *Mr.* Long, *for that he being high Sheriff of the County of* Wilts, *had the Charge and Cuſtody thereof committed to him, and had taken his Oath according to the Law to abide within his Bailys-wick all the time of his Sheriff-wick, and his Truſt and Employment requiring*

requiring his perſonal attendance therein, did contrary thereto ſuffer himſelf to be choſen a Citizen for the City of Bath *to ſerve in the laſt Parliament, and did attend at* Weſtminſter *in Parliament WITHOUT HIS MAJESTIES LICENCE, he being Sheriff at that time: and that for the forementiond Offences and Breach of his Oath, and neglect of his Truſt, and Contempt of his Majeſty, the Decree was, That he ſhould be Committed to the* Tower *during his Majeſties Pleaſure, and pay a Fine of* 2000 *Marks to the King.* Hereby you ſee that his Majeſties *LICENCE* or *Diſpenſing* with that *Statute* had indemnify'd him from it in the *Court* of *Law*; and that the *poteſtas Superioris* being neceſſarily imply'd in a *promiſſory* Oath, the *King* as *ſupreme* Governour of *all* Perſons in his Realms, commanding or allowing ſuch Officers *ſervice* to the publick *elſewhere*, had ſecured him in either *forum.*

The known *Cuſtom* of the *Speaker of the Houſe of Commons DISABLING himſelf* when *preſented* to the *King*, but of *entring* on his *Charge* on the King's approbation and pleaſure ſignify'd (according to that ſaying of *Cur me poſſe negem quod tu poſſe putes*) may paſs for ſome *repreſentation* to our thoughts of *Diſability* to ſerve the publick, then *evaporating* when the King as *Governor* of the *Realm* doth give the Subject a Call ſo to do. You may find this practice of the *Speaker's diſabling himſelf* ſet down in *Coke* 4. *Inſt. c.* 1. And I ſhall here by the way take notice that he there likewiſe mentions it that *one of the Principal ends of Calling of Parliaments is for the redreſs of the Miſchiefs and Grievances that dayly happen.* And he had there before ſaid, Now *foraſmuch as divers Laws and Statutes have been enacted and provided for theſe ends aforeſaid, and that divers Miſchiefs in particular, and divers Grievances in general concerning the Honour and Safety of the King, the State and Defence of the Kingdom, and of the Church of* England *might be prevented, an excellent Law was made* Anno 36. E. 3. *which being applied to the ſaid Writs of Parliament doth in few and effectual words ſet down the true ſubject of a Parliament in theſe words,* **For the maintenance of the ſaid Articles and Statutes, and redreſs of divers Miſchiefs and Grievances which daily happen, a Parliament ſhall be holden every year, as another time was Ordain'd by a Statute.** *Before the Conqueſt Parliaments were to be holden twice every year,* &c.

But accordingly as my Lord *Coke* there takes notice of the *ſtyle* of the *Statute* of 36. *E.* 3. *viz.* **to the Honour of God, and of holy Church and quietneſs of the People**, and according to the ſtyle of the Statute of 10. E. 3. **Becauſe our Sovereign Lord the King** Edw. 3. **which Soverainly deſireth the maintenance of the Peace and Safeguard of his People,** &c. **hath Ordain'd,** &c. **for the Quietneſs and Peace of his People,** &c. and ſuitably to the ſtyle of the **Statute** of 14° E. 3. 1. **To the Honour of God,** &c. **The King for Peace and Quietneſs of his People as well great as ſmall, doth Grant and Eſtabliſh the things undermitten,** &c. and to that of 20. E. 3. **and for this Cauſe deſiring as much for the Pleaſure of God, and Eaſe and Quietneſs of our Subjects,** and according to that ſtyle in the *Regiſter*, **Nos oppreſſiones, duritias, damna exceſſus, & prædicta gravamina volentes relinquere impunita, volenteſq; ſalvationi & QUIETI populi noſtri in hac parte proſpicere ut tenemur,** &c. and according to the Truſt committed to Princes by God to endeavour that their Subjects may *under them lead QUIET and Peaceable lives in all Godlineſs* and Honeſty (and which is the great *Fundamental* reaſon of the *Moral* Obligation of Princes to *relax* the *Summum jus* of their *Laws* by ſometimes *DISPENSING* therein) ſince we may eaſily imagine by our thinking of a *late* Conjuncture, how poſſible it was that the *Peace*

and

and *Quietneſs* of the People might be diſturb'd by the *Annual* Calling of Parliaments, according to the tenour of thoſe Laws; our Princes as *Supreme* Governors of the *Realm*, did often *diſpenſe* with their obſervance.

The *Author* of the *Book* call'd *The Long Parliament Diſſolv'd*, Printed in the *year* 1676. refers to *the Laws of* 4° *E.* 3. c. 10. and 36. *E.* 3. c. 14. 5. *E.* 3. N°. 141. 5. *E.* 2. N°.——1. *R.* 2. N°. 95. *as poſitively appointing the Meeting of a Parliament once within a year. And the People* (ſaith he) *have ſilently waited and born the Omiſſion of our Princes in not ſo Calling Parliaments:* And he further mentions how *Queen* Elizabeth *Prorogued a Parliament for three days more then a year*: and he preſumes to complain of His late Majeſty's *Proroguing* his long *Parliament* to above a *years* time as *illegal*, and he argues for that Parliaments being diſabled from Sitting and acting afterward as a Parliament, by reaſon of ſuch Prorogation as contrary to the aforeſaid Laws, and which, he ſaith, *were declared to be in force when the triennial Act was made in* 16. Caroli 1^mi. *and ſo likewiſe in the Statute for repealing that triennial Act in* 16. Car. 2°. *in theſe words, And becauſe by the Ancient Laws and Statutes of this Realm made in the Reign of King* Edward *the Third, Parliaments are to be held very often*, &c.

And how the *Judgment* of the *Houſe* of *Lords* was aſſertive of the *legality* of that Parliaments not being diſabled from ſitting after ſuch His late Majeſty's *Prorogation*, is freſh in memory.

But to return from whence I digreſs'd, I may here take notice to you how our *Princes* as Supreme *Governors* of the *Realm*, and as having the *Rule* of *all* Perſons *committed* to them by *God* (and to whom they ſtand accountable for the ſame) have held themſelves obliged further to *diſpenſe* with *diſability* incurr'd by *Acts* of *Parliament* upon a Religionary account, and which they have done to the general ſatisfaction of their Subjects of all Religions.

A: What do you here intend to refer to?

B. I do here intend to refer to the *Statute* of 3° *Jacobi* c. 5. by one Clauſe in which Act **Convict Recuſants are DISABLED from practiſing Phyſick, or bearing any Office or Charge Military**, and by which Clauſe every Perſon offending, **is to forfeit for every ſuch Offence 100 l. and the one Moyety thereof to be to the King, and the other Moyety to him that will ſue for the ſame**, &c. But notwithſtanding the *Zeal* of that *Prince* againſt *Popery*, he out of a *tender* regard to the *Bodies* and *Healths* of his People, and the *ennabling* many learned Roman-Catholick *Phyſicians* to preſerve them, did by *Connivence* ſufficiently *diſpenſe* with that Law; inſomuch that it may be ſaid, that that ſevere *diſabling* Law came on the Stage, but as *Cato* into the *Theatre*, *only to go off again.*

And I have elſewhere mention'd it, that a *Book* afterward Printed in his Reign, call'd *The Foot out of the Snare*, ſets down the *Names* of about *Twenty five* famous Roman-Catholick *Phyſicians* then *Practiſing* in *London*, and the places of their abodes, and whom yet (I believe) no *Informer* ever *moleſted.*

And notwithſtanding the *diſability* incurr'd by that *Act* of Parliament, I account that an eminent Roman-Catholick *Phyſician* not long ſince dead, was not by any among our various *Sects* of *Proteſtants* in the *Plot-times*, envy'd the liberty of being in our *Metropolis* the greateſt *Practicioner* of that noble Science. By the ſame *Clauſe* Roman-Catholick *Lawyers* are likewiſe *diſabled* from Practice, and under the ſame Penalty; but who likewiſe enjoy'd the ſame *Diſpenſation* by *Connivence* with thoſe of the other *Profeſſion*, accordingly as Mr. *Nye* in his Book, call'd *Beams of former Light* obſerves, p. 146. viz. *The Law, Phyſick, Merchandize*, &c. *may be practiſed by a Turk, or Jew, or Papiſt here among us*, &c.

How ſevere the Laws in being are againſt Roman-Catholicks of the other great Profeſſion, namely of *Theology*, and of the Clerical order officiating here, you know. But you likewiſe know my opinion I diſcours'd to you of in the *Conjuncture* of the *Plot*, and *Panick fears*; namely, that by virtue of the Contents of the *Aſſertory* part of the *Oath* we are upon, even our *Proteſtant* Kings as Supreme *Governors* of the Realm both in Matters *Eccleſiaſtical* and *Civil*, and as having the *Rule* of all Perſons committed to them by God, were morally bound to ſee our *Roman-Catholick* Countreymen, while living among us here, provided with a Competent *Prieſthood*, as *Phyſicians* for their *Souls*, and to adminiſter the Sacraments to them.

A. Yes, I remember your Diſcourſe of that matter then, and how you mention'd it; that if any *Turks* or *Jews*, or any *Heterodox* Religionaries deſired to live here without a *Prieſthood*, the Prince as *Guardian* of both *Tables*, was obliged by his *Coercive* Power to make them put their own *Principles* in *practice* by their having a *Competent* Prieſthood, and which all the *Sects* of the *Mahumetan*, *Pagan*, *Jewiſh* and *Chriſtian* Religion own it as their *Principle* to have: and that as Religion was neceſſary to the State to make men good Subjects and ready to ſerve their Prince, and juſt Dealers, a *Prieſthood* was neceſſary to Religion.

B. You are not therefore to wonder at the *Diſpenſation* by *Connivence* ſo many Roman-Catholick *Prieſts* enjoy'd here in the Reigns of former Princes. And I ſhall ſome other time tell you how our Laws that *DISABLE Papiſts* from bearing Arms, were in the time of the Rebellion after *A.*1640. neceſſarily diſpens'd with by the Royal Martyr as *Supreme* Governor of the *Realm*; and that none of the *Church* of *England* did look with *an evil eye* in the leaſt on ſuch *diſability*, being then *diſpens'd* with by *Prerogative*.

A. I ſuppoſe you may have heard it *objected* that by the *Statute* of 25. *C.* 2. Car. 2. which has lately employ'd your thoughts, the *Prerogative* of the King is not touch'd; for that the *King* may grant the *Offices* to any of his *Subjects*, and that the *Act* is only a *Direction* to the *Subject* to *qualifie* himſelf accordingly for the King's *Service*, and that if he be *uncapable* to ſerve the *King*, 'tis through his own *default*, and he is puniſhable for the ſame, as happen'd in the *Caſe* of one who was made *Sheriff* and neglected to take the *Oaths*: and that there was an Opinion given in the Caſe that no *Subject* could put himſelf out of a *Capacity* to *ſerve* the King, but for ſo doing he is *puniſhable*.

B. But the more you think of this Matter, you will find the *unreaſonableneſs* of the *Objection* recurring upon your thoughts with greater force. For it is not in mens Power to *qualifie* themſelves to *ſerve* the *King* by *believing* what *doctrinal* Propoſitions they will: and tho you have heard of a *Faith* that will remove *Mountains*, yet you may conſider that 'tis as eaſie to *remove* them as your *Faith* it ſelf about Matters of *reveal'd* truth, and that conſidering the Circumſtances ſome mens Minds are involv'd in, they can no more alter their beliefs about *Tranſubſtantiation*, then they can *tranſubſtantiate* themſelves into other Creatures; and are under a *Moral* incapacity of preventing another incurred by *Law*. And therefore as it would be Injuſtice in a Judge to *Puniſh* a man for the Errors of the mind that he knoweth not to be *voluntary*, and for a man's not putting himſelf into a *Capacity* to *ſerve* the *King*, by the *Profeſſing* of the truth in *Problematical* Points, when the *King* of *Kings* hath by the not *ſufficient* promulgating of ſuch truth to his underſtanding, render'd him *innocent* in his *diſbelief* thereof, and ſo long morally *uncapable* to profeſs it; ſo by one man's

man's after another appearing thus *unable* to *qualifie* himſelf to *ſerve* the *King*, he may be *totally* unſerved.

I have often heard you complain of the narrow *Idea*'s of the King's *Supremacy* in ſome of the *Non-Conformiſts*: but if you will read the *Proteſtation of the King's Supremacy* made by the *Non-conforming* Miniſters and Printed *A. D.* 1605. you will find that they have there given in ſufficient caution for their Principles, not allowing any of the King's Subjects being *diſabled* from ſerving him. For they having ſaid in §. 1. *We hold and maintain the ſame Authority and Supremacy in all Cauſes and over all Perſons Civil and Eccleſiaſtical granted by* Statute *to Queen* Elizabeth, *and expreſſed and declared in the Book of* Advertiſements and Injunctions, and *in Mr.* Bilſon *againſt the Jeſuites, to be due in full and ample manner without any limitation or qualification to the King, and his Heirs and Succeſſors for ever*, they add in §. 2. *We are ſo far from judging the ſaid Supremacy to be unlawful, that we are perſwaded that the King ſhould ſin highly againſt God, if he ſhould not aſſume the ſame to himſelf, and that the Churches within his Dominions ſhould ſin damnably, if they ſhould deny to yield the ſame to him; yea, tho the STATUTES of the Kingdom ſhould deny it to him.* And they tell you in *Sect.* 6. that *the height of the King's Royal Dignity conſiſts in his Supremacy*.

It is thus likewiſe a kind of familiar or *Vulgar* Error among *Proteſtants* to think that in the *ancient* times this Fundamental *Aſſertory* part of your Oath that *the King is the only Supreme Governor of this Realm*, was not allow'd. Long before the *Reſcript* of the *Univerſity* of *Oxford* to *Henry* the 8th, *A.* 1534. mention'd *that he was next under God their happy and Supreme Moderator and Governor*, and on which being brought into the Parliament Houſe, an *Act* paſſed whereby the King was declared *Supreme Head* and *Governor* of the Church, and long before it was declared by the Parliament 16. *R.* 2. c. 5. that **the Crown of** England **hath been ſo free at all times, that it hath been in no earthly ſubjection, but immediately ſubject to God in all things touching the Regality of the ſame Crown, and to none other** and long before *Bracton*'s writing in the Reign of *H.* 3. *Omnis quidem ſub Rege, & ipſe ſub nullo ſed tantum ſub Deo*; and ipſe autem Rex non debet eſſe ſub homine, ſed ſub Deo. *&c.* you will find (if you look into *Coke*'s 4th *Inſtit.* c. 74.) that in the Law before the *Conqueſt*, the *ſtyle* runs, **Rex autem quia Vicarius ſummi Regis eſt, ad hoc eſt conſtitutus, ut Regnum terrenum & populum Domini & ſuper omnia ſanctam veneretur Eccleſiam ejus & regat,** &c. and where he tells you of the ſtyle of King *Edwin* in his *Charters*, viz. of **Anglorum Rex, & totius Britannicæ telluris Gubernator & Rector.** And he there refers likewiſe to ſeveral Grants made by *Abbots* and *Priors* to King *E.* 4. wherein they ſtyle him by theſe very words *Supremus Dominus noſter.*

But that he might *perimere litem*, as to the point of the ancientneſs of the King's *Supremacy*, he there referreth to the *judgment* of *Parliament* declared in the *Statute* of 24°. *H.* 8. c. 12. viz. **That by divers authentick Hiſtories and Chronicles, it is manifeſtly declared and expreſſed, that this Realm of** England **is an Empire, and ſo hath been accepted in the World govern'd by one Supreme Head and King,** &c. **unto whom a Body-Politick, compact of all ſorts and degrees of People divided in terms and by names of Spiritualty and Temporalty been bounden and owen to bear next unto God, a natural and humble Obedience,** &c. And here I am led to tell you, that as it is on this *Foundation* of the King's being the *Supreme Governor* and *Ruler* of *all* ſorts and degrees of men thus anciently acknowledged by our *Roman Catholick* forefathers, that the *Regal* Power of *Diſpenſing*

ſing with the *Laws* that were *Penal* by *Incapacity*, and particularly in order to the Crown's being *enabled* to *command* the *Obedience* and *Service* of all *Eſtates* and *Degrees* of *men*, was built, ſo it is on the ſame that the *Uſurpations* of the *Papal* Diſpenſative Power of that kind were oppoſed. I ſhall before we part give you inſtances hereof.

A. I thank you, but ſhall here tell you, that the Expreſſion you uſed juſt now about the *King* being *diſabled* by his *Subjects* being *ſo*, hath overcaſt my thoughts with ſome kind of *horror*.

B. I cannot help it; but if you will have me ſpeak with the *frankneſs* of a *Philoſopher*, concerning the *Nature* of things, the *diſabling* of the *Subjects* muſt have that effect in *Nature*, and of the *diſabling* of their *Country* too. And I think too you gave me a *hint* for ſome ſuch thought at our laſt meeting. If you do but conſider the Services done to Monarchs by that abject Nation of the *Jews* (and who by *Tacitus* were call'd the *Viliſſima pars ſervientium*) and how in our *Saviour*'s time they were ſerviceable to the *Roman* Empire in the Collection of the *Cuſtoms*, and how much they have been ſince and ſtill are uſeful to the Grand *Signior*, and to many Chriſtian Princes by gathering in their *Impoſts*, you will eaſily imagine the loſs that would redound to Princes by Religionary *Heterodoxy* diſabling any to ſerve them.

It is but natural to men of the moſt *inquiſitive* and penetrating thoughts to differ from many Points of *Theology* receiv'd by Princes and their People: and ſince ſuch *heterodoxy* doth *difficult* their acceſs to Preferment, it is but Natural to them by their working Thoughts and Induſtry to arrive at the excelling the duller *Orthodox* in whatever courſe of life they take, and by that means to try to *puſh* on their way into their *Prince*'s favour, and conſequently to have very ſharp *regrets* againſt any Methods that would *incapacitate* them for it.

And as if this *Civil* Death were to Men of great Thoughts the *terrible* of *terribles*, and what as hindring them from ſerving their Prince and Country were like Burying them alive, I ſhall ſhew you how a Man of great Abilities, and who had made a great Figure in the Church and State, reſented it in the *Conjuncture* of A. 1640. I mean Archbiſhop *Williams*, who in his famous *Speech* in *Parliament* that year againſt the *Bill* that afterward paſſed into a *Law* to *Diſable* Perſons in *Holy* Orders from exerciſing any *Temporal* Juriſdiction, doth thereupon repreſent it, that *under a* CAIN's *mark an eternal kind of diſability or incapacity is laid on them from enjoying hereafter any of thoſe Rights, Favours, or Charters of former Princes, and which is the heavieſt Point of all without killing of* Abel, *or any Crime laid to their charge, more then that in the beginning of the Bill 'tis ſaid roundly, and in the ſtyle of* Lacedæmon, *that they ought not to intermeddle*, &c. And what his thoughts were of the Injuſtice of ſuch *incapacity* put on the *Clergy*, and of the *odiouſneſs* of that *Puniſhment* of *incapacity*, appears by what he afterward ſaith, *viz. I come to the 4th part of this Bill, which is the manner of the inhibition every way heavy in the Penalty, heavier a great deal in the incapacity. In the weighing the Penalty, will you conſider the ſmall wyers; that is, poor Cauſes that are to induce the ſame; and then the heavy load that hangs upon theſe wyers? It is thus. If a Natural Subject of* England, *intereſſed in the* Magna Charta and Petition of Right, *as well as any other; yet being a Perſon in Holy Orders ſhall happen unfortunately to Vote in Parliament, to obey his Prince by way of Councel, or by way of a Commiſſioner be required thereunto, then is he preſently to loſe and forfeit for his firſt offence all his Means and Livelyhood*, &c. *This Peradventure may move others moſt, but it doth not me. It is not the Penalty, but the Incapacity, and*

and as the Philoſophers would call it, the Natural impotency impoſed by this Bill on men in holy Orders to SERVE the KING, or the STATE in this kind, be they otherwiſe never ſo able, or never ſo willing, or never ſo vertuous, which makes me draw a kind of Timanthe's *veil over this Point, and leave it without any amplification at all to your Lordſhips wiſe and inward Thoughts and Conſiderations.*

But if with ſo much *thunder* of Paſſion as well as *lightning* of reaſon that learned *Speech* from the *Biſhops* Bench did ſo much *reſent* the puniſhing the *Clergy* with *diſability* to execute *ſecular* Offices, and to have the honour of *ſerving* their *Prince* and *Country* therein, and for the impoſing of which *diſability* that known place of *Scripture*, 2 *Tim.* 2. 4. **No man that wars, entangles himſelf with the Affairs of this life,** was *alledged* in the *Houſe* as thus *diſabling* them by the *Law* Divine (and as to which the *Biſhop* in his *Speech* gives a learned Anſwer) we may well imagine how *Lay-men* of good Births and Educations, and whoſe Diligence employ'd in Courts and Cities, and Camps abroad, may have qualify'd them here to *ſtand before Kings*, muſt neceſſarily aggravate in their thoughts the diſhonour of *incapacity* to *ſerve* their *Prince* in *ſecular* Employments.

A. Was that *Speech* of the *Archbiſhop* ever printed?

B. You will find it in the *Apology for the Biſhops to ſit and Vote in Parliament*, printed in *London A.* 1661. And he hath in that *Speech* ſome other Expreſſions which corroborate that obvious natural notion of the *King* and *Kingdom* being *diſabled* by diſabling of Clergy-men from *ſecular* Employments. For having reflected on the *Bill* for *diſabling* them from ſitting in the *Star-chamber* and at the *Council-table*, ſitting in *Commiſſions* of the *Peace*, and other Commiſſions of *ſecular* Affairs, he afterward ſaith, *But, my noble Lords, this is the Caſe; Our King hath by the* Statute *reſtored to him the Headſhip of the Church of* England. *And by the word of God he is* cuſtos utriuſque tabulæ. *And will your Lordſhips allow this eccleſiaſtical Head no eccleſiaſtical Senſes? No Eccleſiaſtical Perſons to be conſulted with at all? No not in any Circumſtances of time and place? If* Cramner *had been thus dealt with in the Minority of our young* Joſias *King* Edward *the* 6th. *what had become of that great work of our Reformation in this flouriſhing Church of* England?

A. The truth is, it being a kind of a *Rule* that all Men of Parts who have been *liberally* educated, and even thoſe excelling in *mechanical* profeſſions, do naturally deſire to *ſerve* the *King*, and *ſtanding before Kings* having been *annext* in *Scripture* as a reward to *diligence* in ones calling; a *Mark* of *diſability* put on *Lay-men* to ſerve their Prince, cannot but tempt them to *paſſion* on that account more then it ought to have troubled the *Biſhop* when he call'd it a *Cain's Mark*, in regard you have mention'd it, that Clergy-men to ſome did ſeem by the Law-Divine *diſabled* from *ſecular* Employments.

B. According to the Opinion of *Judge Vaughan* in his *Reports*, who in *Hill* and *Good's Caſe* there makes *a lawful Canon to be the Law of the Kingdom as well as an Act of Parliament, and whatever is the Law, is as much the Law as any thing elſe that is ſo, for what is Law, doth not ſuſcipere magis aut minus*, they were by the *Canon* Law diſabled from intermedling in *ſecular* Affairs: And according to his *deſcription* of *malum prohibitum* in *Thomas* & *Sorrel's caſe* p. 358. you may ſay they were by the *Statute* ſo *diſabled* from intermedling. For he there ſaith *malum prohibitum is that which is prohibited per le ſtatute. Per le ſtatute is not intended only an Act of Parliament, but any obliging Law or Conſtitution, as appears by the Caſe: for it is ſaid the King may diſpenſe with a Baſtard to take Holy Orders, or with*

a Clerk to have two Benefices with Cure, which were mala prohibita *by the Canon-Law, and by the Council of* Lateran, *not by Act of Parliament.*

The *Lateran* Council his Lordship there means, is that held under *Alexander* the 3*d A.* 1180, and which *Council* hath it in these words, *viz. neque servi neque spurii sunt ordinandi*: And, *uni plura ecclesiastica beneficia non sunt committenda.*

And therefore the *Bishop* in that *Speech* saith, That *this Doctrine of debarring Persons in Holy Orders from secular Employments, is the Doctrine of the Popish Church, and first brought into this Kingdom by the Popes of* Rome *and* Lanfrank, Anselm, Stephen Langthon, *and* Othobone *and with an intent to withdraw the Clergy from their receiving Obligations from either King or Lords, and make them wholly dependants on the Popacy.*

But *Bishop Jewel* tells us in his *Apology* p. 122. that *Veteres Canones Apostolorum illum Episcopum, qui simul & Civilem magistratum, & ecclesiasticam functionem obire velit, jubent ab officio summoveri.*

A. Yet notwithstanding their being disabled by the antient *Canons*, and the *Nemo militans*, &c. 2 *Tim.* 2. as often alledged against them by the *Canons* and *Canonists*, I think they were frequently *employ'd* by our *Princes* in the greatest *Offices* of the *State.*

B. They were so, and the *Disability* of a whole *third* estate as to bearing *secular* Offices did not stand in the way of *Prerogative.* I have read it in *Fuller's Church-History* that in the *year* 1350. *the Lords and Commons in Parliament did find themselves aggrieved that the Clergy-men engrossed all secular Offices, and thereupon presented the ensuing Petition to the King according to this effect, insisting only in the substance thereof,* viz.

1370.

Ex Rot. Parl. in turr. Lond. in 45. Ed. tertii.

And because that in this present Parliament it was declared to our Lord the King, by all the Earls, Barons and Commons of England, *that the Government of the Kingdom hath been performed a long time, by the Men of Holy Church, which are not justifyable in all Cases, whereby great mischiefs and damages have happen'd in times past, and more may happen in time to come, in disheriting of the Crown and great prejudice of the Kingdom,* &c. *that it will please our said Lord the King that the Lay-men of the said Kingdom which are sufficient and able of Estates, may be chosen for these, and that no other Person be hereafter made Chancellor, Treasurer, Clark of the Privy-Seal, Barons of the Exchequer, Chamberlain of the Exchequer, Comptroller, and all other great Officers and Governors of the said Kingdom, and that these things be now in such manner establish'd in form aforesaid that by no way it may be defeated, or any thing done to the contrary in any time to come, saving to our Lord the King the Election, and removing of such Officers, but that always they be Lay-men, such as is abovesaid.*

Justifiables in the French originals. Quære, Whether not able to do justice, or not to be justified in their Employment as improper for it.

To this Petition the King return'd that he would ordain upon this point, as it should best seem to him by the advice of his good Council.

In fine, you see that tho the Clergy-men were thus *disabled* by the *general* Customs and *Usage* of the Realm, and by *lawful* Canons and *provincial* Constitutions, accounted by that *Judge* beforemention'd to be *tanta-mount* to *Acts* of *Parliament*: yet ~~you see~~ our Kings did frequently *dispense* with these Customs, lawful *Canons* and *Constitutions.* And tho the *Office* of *Bishops* renders them *guardians* of the *Canons*, yet you see how tender they have been of the *Regal* power of *Dispensing* therein.

And as that saying of *Wicliffe*, however censured in the *Council* of *Constance*, may perhaps with a little help be reduced to Orthodoxy, *viz. That no one should be Excommunicated by any Prelate, unless he know him Excommunicated*

municated by God, ſo with parity of reaſon it may be ſaid, that none ſhould be totally *diſabled* by any Prince from ſerving him, unleſs he knew him really *diſabled* by *God*; and eſpecially when he knew the contrary, and that the Services of the great men of the *Clergy* had ſo often been ſucceſsfully employ'd at the Helm of *State*: and when for the honour of *Clergymens* Councel ſome of the moſt profound pieces of State-Policy our *Engliſh* Story hath in it are to be attributed to *Clergy-mens* officiating in their Princes *Councels*, and as for Example, when by the figure that Biſhop *Morton* made at the Helm, he did make up the diſmal breach, and united the two Houſes of *York* and *Lancaſter* in the Happy Marriage between *Henry* the *7th* and the Lady *Elizabeth*, and when Biſhop *Fox* who was Lord Privy Seal, did by his Advice lay the Foundation of a more happy Union between the Kingdoms of *England* and *Scotland*, by the eldeſt Daughter of *Henry* marrying *James* of *Scotland*, and the younger matching into *France*, that ſo on their ever coming to inherit, *Scotland* might be *annex'd* to the Imperial Crown of *England*, and *England* not be annex'd as a *Province* to *France*, and for the *Conſequences* of which *Advice*, both *Engliſhmen*, and *Engliſh* and *French* Proteſtants have ſo much cauſe to ſay, *We Praiſe thee, O God*, &c.

And I am here minded of what *Fuller* tells us on *A.* 14. *H.* 4. viz. **It was moved in Parliament that no Welſhman, Biſhop or other, ſhall be Juſtice, Chamberlain, Chancellor, Treaſurer, Sheriff, Conſtable of a a Caſtle, or Keeper of Records, or Lieutenant in the ſaid Office in any part of** Wales, **or of Councel to any Engliſh Lord, notwithſtanding any Patent made to the contrary**, Cum clauſulâ non obſtante licet Wallicus natus: **and that it was anſwered, that the King willeth it, except the Biſhops: and for them and others which he hath found good loyal Lieges toward him, our ſaid Lord the King will be adviſed by the Advice of his Councel.** *Ex Rot. Parliamentariis in turri Lond. in hoc Anno:* which Citation *Fuller* profeſſeth to be *taken out of the Authentick Records in the Tower.*

There paſſed an *Act* of Parliament in the *4th* year of *Henry* the *4th*, by which it is Enacted, That no *Welſhman ſhall be Juſtice, Chamberlain, Sheriff, Coroner, nor other Officer in any part of* Wales, *notwithſtanding any Patent to the contrary with the Clauſe of* Non-obſtante: and yet *without Queſtion* (ſaith my Lord *Coke*, 12th Rep.) *the King might diſpenſe with this Statute*: but you ſee how on the Parliaments reſenting the Diſpenſations the Act had met with, and particularly in Biſhops having contrary to the tenor of the *Act* ſerved the Crown in Secular Employments, the King particularly adhered to the exerciſe of his *Diſpenſative* Power in their Caſe.

It was upon the ground of this *Aſſertion*, viz. Of the *Crown*'s being entitled to Command the *Services* of all *Subjects*, that ſome Papiſts were employ'd by Queen *Elizabeth* in Affairs of the State, notwithſtanding any diſability incurr'd by not taking the *Oath* of *Supremacy*. And Viſcount *Montacute*, tho a *Roman Catholick*, was (as *Cambden* tells you) ſent by her as her Embaſſadour to the King of *Spain*, and employ'd too about the Buſineſs of the *Scots*, and to do right to the *Proteſtant* Religion. Sir *Edward Carne*, likewiſe a *Roman Catholick*, was ſent by her as her *Embaſſador* to the *Pope*.

And as to the *ſenſe* of many of that *Queen*'s moſt renowned *Miniſters* of *State* about the *Deprivation* of the *Nonconformiſt* Divines diſabled *eo Nomine* from their Miniſtry, being *Penal* to the *People*, the *Author* of *certain Conſiderations tending to promote peace and good will among Proteſtants*, hath mention'd it, that *Eight* of that *Queens Privy Councellors* writ a *Letter* in

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their favour to the *Biſhops* of *Canterbury* and *London*, in the cloſe whereof 'tis ſaid, *viz. Now therefore we for the Diſcharge of our Duties, being by our Vocation under her Majeſty bound to be careful that the Univerſal Realm may be well govern'd according to the Honor and Glory of God, and to the diſcharge of her Majeſty being the Principal GOVERNOR of ALL her SUBJECTS under Almighty God, do moſt earneſtly deſire your Lordſhips to take ſome charitable Conſiderations of theſe Cauſes that the PEOPLE of THIS Realm may not be DEPRIVED of their Paſtors being Diligent, Learned and Zealous, tho in ſome Points Ceremonial they may ſeem doubtful only of Conſcience, and not of wilfulneſs*, &c. *Your Lordſhips loving Friends* William Burghly, George Shrewsbury, A. [illegible]rwick, R. Leic.ſter, C. Howard, J. Crofts, Chr. Hatton, Fra. Walſingham.

And what ſenſe the *Houſe* of *Commons* had in the beginning of the *Reign* of King *James* the Firſt, of the *Diſabling* of ſeveral of the *Nonconformiſt* Divines being a *Gravamen* to the *Realm*, appears by the *Petition* of that *Houſe* to the *King*, Anno 1610. as I find it in Mr. *Nye*'s *Beams of former Light*, p. 103. viz. *Whereas divers painful and learned Paſtors that have long time travell'd in the work of the Miniſtry with good Fruit and Bleſſing of their Labour have been removed from Eccleſiaſtical livings, being their free-hold, and from all means of maintenance, to the great grief of ſundry your Majeſty's well-affected Subjects, we therefore humbly beſeech your Majeſty would be graciouſly pleas'd that ſuch deprived and ſilenced Miniſters living quietly and peaceably, may be reſtored*, &c.

But, in ſhort, if you conſider that the great Cauſe that excited the Loyal Zeal expreſs'd in the *Statute* of the Firſt of Queen *Elizabeth* (and whereby ſo many Statutes of *Harry* the 8th againſt the Papal U[illegible]rpations were revived) was that the *King* and *Kingdom* might not be diſabled by *Clergymens* not being *Subjects* to the *Crown* through Papal *Exemptions*, and that the Crown might *Cum effectu* be *reſtored* to its *Government* over them, *i.e.* of the *whole* Realm, and that our *Monarchs* ſhould by means of ſuch *Exemption* be no more *diſabled* from being *Governors* only *IN* their *Realm*, and not *OF it* (and as when the Right of two Perſons claiming to be Princes of *Tuſcany* was before the *Pope*'s Arbitrage, he determin'd that one of them ſhould be *A Prince IN Tuſcany* and the other *Of it*,) you will find that this *Supreme* Power over *all* Perſons, as inherent in the King, is the very *Lapis Angularis* on which your *Abjuration* of *foreign Juriſdiction*, and on which the whole *Promiſſory* part of your *Oath* are built. For when you have firſt *declared* in your *Oath* that *the King is the only Supreme Governor of this Realm, as well in all Spiritual or Eccleſiaſtical things or Cauſes, as Temporal*, and then what followeth upon that, *viz. That no foreign Prince, Perſon, Prelate, State, or Potentate, hath or ought to have any Juriſdiction, Power, Superiority, Prehemínence or Authority Eccleſiaſtical, or Spiritual within this Realm*, you ſay, *And THEREFORE I do utterly renounce and forſake all foreign Juriſdictions*, &c. *And do promiſe that from henceforth I ſhall bear Faith and true Allegiance to the King's Highneſs*, &c. *and to my Power ſhall aſſiſt and defend all Juriſdictions*, &c. *granted or belonging to the King's Highneſs*, &c. *or united and annex'd to the Imperial Crown of this Realm.* Thus then the *Reaſon* why you *abjure* foreign Juriſdiction (*for you ABJURE when you ſwear to quit and forſake*, as Mr. *Nye* in his *Obſervations* on that *Oath* tells us) and why you *promiſe* to *aſſiſt and defend all Juriſdictions granted or belonging to the King* whoſe Subject you are) is reſolved into the Kings being the *only Supreme Governor* of this *Realm*, as well in all *Spiritual* or *Eccleſiaſtical* things or *Cauſes* as Temporal.

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I am here further to tell you, that when by your *Oath* you have *renounced* the Pope's *Diſpenſative* Power; you have aſſerted, and have obliged your ſelf to defend the Juriſdiction of the King's *Diſpenſative* Power in the room of it: and the *defence* of which was the great deſign and *drift* of the entire *Statute* of 1°. *Eliz.* and of your *Oath* therein, and no *collateral* thing.

A. I have been and am pleas'd with that *Proſpect* you have given me into the *Region* of the *Diſpenſative* Power uſed by the *Crown* in the *Interpretation* of my Oath, a *Region* that was before to me like the *terra Auſtralis & Borealis incognita:* but (to deal frankly with you) I am yet to ſeek out the *meaning* of this *notion* laſt *ſtarted* by you, that the *drift* and *deſign* of the *Statute* of 1°. *Elizabethæ*, and the *Oath* was to *prop* up the King's *Diſpenſative* Power. I doubt not but you are perfectly ſenſible that he who ſpeaks to that tender thing call'd *Conſcience*, and about an *Oath*, ought to be tender of any point he urgeth to it, and not to *wyre-draw* any thing by *forced* Conſequences that is to be offered to it as Obligatory.

B. I aſſure you I go by thoſe very meaſures in giving you my Judgment of the deſign and *drift* of that *Statute* as I have done, and that he muſt put the Statute on the wrack that will make it ſpeak any other meaning. Conſider what the *Prefatory* part, as the *key* of it mentions, *viz.* That divers good Laws and Statutes that were made in Henry the Eighth's time as well for the utter extinguiſhment and putting away of all Uſurped and Foreign Power, &c. as alſo for the reſtoring and uniting to the Imperial Crown of this Realm, the ancient Juriſdictions, &c. to the ſame of Right belonging, by reaſon whereof we your moſt humble and obedient Subjects from the 25th year of the Reign of your ſaid dear Father were continually kept in good order, and were disburden'd of divers great and intolerable Charges and Exactions before that time unlawfully taken and exacted by ſuch Foreign Power and Authority as before that was uſurped, until ſuch time as all the ſaid good Laws and Statutes by one Act of Parliament made in the firſt and ſecond years of the Reigns of the late King Philip and Queen Mary, *&c.* were repeal'd: by reaſon whereof they then further mention how they were then brought under an Uſurped Foreign Authority to their intolerable Charges, and they thereupon deſire the *Repealing* of that *Act*. Here we are given to ſee by their *dating* the *æra* of their being well *govern'd* and *disburthen'd* of divers great *intolerable* Charges and *Exactions* taken and exacted by Foreign Power, from the 25*th* of *Henry* the 8*th*, ~~and~~ had their eye on the *Statute* of the 25th of *Henry* the 8th, *c.* 21. entituled, *No Impoſition ſhall be paid to the Biſhop of* Rome, which ſets forth how the Subjects of this Realm were impoveriſh'd by intolerable Exactions of great Sums of Money taken out of this Realm by the Biſhop of Rome as well in Penſions, Cenſes, Suits for Proviſions and Expeditions of Bulls, &c. and alſo for Diſpenſations, Licences, Faculties, Grants, Relaxations, Writs call'd Perinde valere, Rehabilitations, Abolitions, and other infinite ſorts of Bulls, Breves and Inſtruments of ſundry Natures, &c. wherein the Biſhop of Rome hath been not only to be blamed for his Uſurpation in the Premiſſes, but alſo for his abuſing and beguiling your Subjects, pretending and perſuading them that he hath Power to Diſpenſe with all Humane Laws, Uſes and Cuſtoms of all Realms in all Cauſes which be call'd Spiritual, which matter hath been uſurped and practiſed by him and his Predeceſſors by many years, in great derogation of your Imperial Crown and Authority Royal, contrary to Right and Conſcience. For where this your Graces Realm recogniſing no Superior un-

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der God, but only your Grace, hath been and is free from Subjection to any mans Laws, but only to such as have been devised, made and obtained within this Realm for the Wealth of the same, or to such other as by SUFFERANCE of your GRACE and your Progenitors, the People of this your Realm have taken at their free liberty by their own Consent to be used among them, and have bound themselves by long Use and Custom to the observance of the same, not as to the observance of the Laws of any Foreign Prince, Potentate or Prelate, but as to the Customes and ancient Laws of this Realm, originally establish'd Laws of the same by the same Sufferance, Consents, and Custom, and none otherwise; it standeth therefore with natural equity and good reason, that in all and every such Laws HUMANE made within this Realm, or induced into this Realm by the said Sufferance, Consents and Custom, your Royal Majesty and your Lords Spiritual and Temporal and Commons, &c. have full Power and Authority not only to dispense but also to authorize some elect Person or Persons to dispense with those and all other humane Laws of this your Realm, and with every one of them, as the quality of the Persons and Matter shall require. And the *Act* afterward mentions the *impoverishment* of the *People* of this Realm by the *Impostes* for Papal *Dispensations*, and refers twice to the Charges of the *taxa Cameræ*, calling them *expressly* in one place, *Impositions taken to the use of the Pope and his Chambers*; and in another, the *old Tax*. And at the *removal* of these *intolerable Charges*, as they are call'd in that of the *Statute* of 1° *Eliz.* or *intolerable Exactions*, as they are call'd in the 25th of *Henry* the 8th; that of the *First* of *Elizabeth* (as I said) had an *eye* in the revival of this of *Henry* the 8th; and the Consideration of which *Statute* will be of importance to us as to that part of our *Promissory* Oath that refers to our *defending* the *Jurisdictions*, &c. *united and annex'd to the Imperial Crown of this Realm*; that *Statute* of *Henry* the 8th having in its *Prefatory* part express'd the Pope's *dispensing* here to be in *derogation* of the King's *Imperial* Crown and Authority *Royal*, and there afterwards mentions how the *Imperial* Crown of this *Realm* suffer'd by those Papal *Exactions*. And the *Preface* of the *Statute* of 1° *Eliz.* refers in general to *divers good Statutes* made in *Henry* the 8th's time, for the *Restoring and uniting to the Imperial Crown of this Realm the Jurisdictions, Authorities to the same of Right belonging*, and which *ushers* in the *reference* to the *Statute* of the 25th of *Henry* the 8th: and then in the following Clause 'tis said, that for the repressing of the usurped Foreign Power, and the restoring the Rights, Jurisdictions and Preheminences belonging to the Imperial Crown of this Realm, &c.

Thus then you see that I have fairly shew'd you out of this *Statute* of Queen *Elizabeth*, where your *Oath* is *situated*, that the *Restoration* of the *Ancient* Jurisdiction of the *Crown* in *dispensing*, was restored to the *Imperial* Crown of this Realm, the which the *Pope* had formerly usurped on in Matters both Ecclesiastical and Civil, and which you are obliged to *defend* against any *Papal* or *Popular* Usurpations whatsoever. I was enforced for your clearer understanding of this *Statute* to conduct you to the 25th of *Henry* the 8th, and where you find several *Expressions* that make it the right of the *Imperial* Crown of this Realm to *dispense* with the *disability* or *incapacity* incurr'd by *Law*. You have there the word *REHABILITATION*, and what is called there the *Writ* of *Perinde valere*, which *Blount* tells you in his Νομο-λέξικον is a *Dispensation granted to a Clerk, who being defective in his title to a Benefice, or other Ecclesiastical Function is* de facto *admitted to it. And it takes Appellation from the words, which make the* faculty *as Effectual to the party DISPENS'D WITH, as if he had*

had been actually CAPABLE *of the thing for which he is diſpens'd with at the time of his Admiſſion.* A. 25. H. *the* 8th, *it is call'd a Writ.*

You have in your *Oath* acknowledg'd the *Crown* of this Realm to be a Crown *Imperial*, and if you had not by the *Comparing* the two *Statutes* together, found that the Power of *Rehabilitation* of Perſons diſabled was reſtored and united to the Crown, as what was *anciently* due to it, and *uſed* by it; yet on the Conſideration of the *Crown* here being call'd *Imperial*, and of its being a *res judicata* among all that write of the *Power* of ſuch *Crowns* that a *Diſpenſation* with Perſons in this *kind*, is allow'd them as one of the *jura Majeſtatis*, you ought by virtue of your *Oath* to be very careful how you deny this *mark* of *Soveraignty* to the *Imperial* Crown of this Realm which you ſee wants *none* of the other.

I think I have now let you ſee that I have here put no *forced* or *wyre-drawn* Conſequences on you, and would hate to do any thing of that Nature in common Diſcourſe, and about a common or trivial matter, and much more in the *concern* of an *Oath*. You know I have often prais'd that *Letter* in *D' Oſſal* where he reflects on ſome Men thus, viz. *Le ſont gens d'eſprit, de ſcavoir & de labeur, qui l'ont forgè, mais de fort mauvaiſe foy, ne faiſans Conſcience, & n' ayans honte de traitter un cas de Conſcience, & ſi important a la Religion Catholique & a toute la Chreſtiente, en chichaneurs & ſophiſtes.*

But further yet to let you ſee that in minding you in point of *Conſcience*, and by *virtue* of this your *Oath*; duly to prop up the Regal Power of *Diſpenſing* with *Incapacity*, I put no *wyre-drawn* Conſequences upon you, and do with the *ſimplicity* that becomes a *Chriſtian* ſpeak to you *ex animo*, I ſhall again give you the *Judgment* of *Parliament* in the *Caſe*, and to that end ſhall firſt direct you to the *Statute* of 37°. *H.* 8. *c.* 17. that begins, In moſt humble wiſe ſhew and declare to your Highneſs your moſt faithful, humble and obedient Subjects, that where your moſt Royal Majeſty is and hath always juſtly been by THE WORD OF God, ſupreme head in the Earth of the Church of England, and hath full power and Authority to correct, puniſh, and repreſs all manner of Hereſies, Errors, Vices, &c. and to exerciſe all other manner of Juriſdictions commonly call'd Eccleſiaſtical Juriſdiction, nevertheleſs the Biſhop of Rome and his adherents minding utterly as much as in him lay to aboliſh, obſcure, and delete ſuch Power given by God to the Princes of the Earth, whereby they might gather, and get to themſelves the Government and Rule of the World, have in their Councils and Synods Provincial made divers Ordinances and Conſtitutions that no LAY or Married man ſhould or might exerciſe any Juriſdiction Eccleſiaſtical, nor ſhould be any Judge or Regiſter in any Court commonly call'd Eccleſiaſtical Court, &c. as by the ſaid Councils and Conſtitutions Provincial appeareth, which ſtanding and remaining in their effect not aboliſh'd by your Grace's Laws, did ſound to appear to make greatly for the ſaid uſurp'd Power of the Biſhop of Rome, and to be directly repugnant to your Majeſty as Supreme Head of the Church, and Prerogative royal, your GRACE being a LAY-MAN, and albeit the ſaid Decrees, Ordinances and Conſtitutions by a Statute made in the 25th year of your Reign be utterly aboliſh'd, &c. But forasmuch as your Majeſty is the only and undoubted Supreme Head of the Church of England, and alſo of Ireland, to whom BY HOLY SCRIPTURE all Authority and Power is wholly given to hear and determine all manner of Cauſes Eccleſiaſtical, and to correct Vice and Sin whatſoever, and TO ALL SUCH PERSONS AS YOUR MAJESTY SHALL APPOINT THEREUNTO, that in Conſideration thereof, as well for the Inſtruction of Ignorant Perſons, &c.

and

and setting forth of your Prerogative Royal and Supremacy: It may therefore please your Highness, that it may be Ordain'd and Enacted, that all and singular Persons as well Lay as those that be now Married or hereafter shall be Married, &c. which shall be made, ordain'd, constituted and deputed to be any Chancellor, Vicar General, &c. Scribe or Register by your Majesty, or any of your Heirs and Successors, or by any Archbishop, Bishop, &c. may lawfully execute and exercise all manner of Jurisdiction commonly call'd Ecclesiastical, &c.

Here you see the *enacting* clause founded on the *previous* solemn *acknowledgment* of the King's *Supremacy*, and on his having the *power* given him, not by *Parliaments* or *People*, but *by SCRIPTURE*, to *appoint* such to be *ecclesiastical* Judges who were by Custom and by the *Laws* of *Councils* and *Provincial* Synods formerly equivalent to *Acts* of Parliament, *incapacitated* so to be. And from whence it is consequently apparent that no positive *humane* Laws whatsoever inflictive of Penal *incapacity* could against the Right inherent in him by the positive *Law* of *God*, oblige him not to *dispense* with the others by his *supreme* Power when he found it necessary so to do. For 'tis on all hands *confessedly* true, that *Parliaments* can no more then the *Bishop* of *Rome delete such Power as is given by God to the Princes of the Earth.*

A. But because a *Parliament* declared that such a supreme Power is given by the *Scripture* to Princes, you know it doth not follow that it is so. And moreover you know that was a *Popish* Parliament that so declared it.

B. But I likewise know that as 'tis in my *Lord Chief Justice* Vaughan's *Reports* in Hill *and* Good's *Case*, that *if a Marriage be declared by* Act *of Parliament to be against Gods Law, we must admit it to be so, for by a Law, that is, an Act of Parliament it is so declared*; so that *Act* of *Parliament* having *declared* it, that *by Holy Scripture all Authority and Power is wholly given to the King, and to all such Persons as he shall appoint to hear and determine*, &c. tho such Persons were by a *lawful* Canon *incapacitated* so to do (a *Canon* that that *Judge* in the words immediately following the other makes to be *the Law of the Kingdom as well as an Act of Parliament*) we must admit such *Power* and *Authority* inherent in the King's *Supremacy* by the *Word* of *God*, thus to supersede *incapacity*. And whether the *incapacitating* Canons were *lawful* ones or no, it is not *tanti* to enquire, since as we know a *Power* inherent in *Kings* by the *Word* of *God*, cannot be either by lawful *Canon* or *Act* of *Parliament* taken away: and much more ought such *Power* to be *construed* and *admitted* as *inherent* in him *by the Scripture*, while the *Act* of *Parliament* continues in being.

But I shall yet bring the acknowledgment of your *Prince*'s Supremacy in this *point* as thus *founded* on *Scripture*, closer to your Conscience by letting you see that you have not only the Judgment of a *Popish* Parliament in the *Case*, but of that very *Statute* of Queen *Elizabeth* that *enjoyns* your *Oath* of *Supremacy*; for it *revives* that *Statute* of *Harry* the 8*th and all and every branches and Articles in it, as you will find it in your Statute-book.*

A. You have mention'd one thing in that *Statute* of *Harry* the 8*th* that doth a little startle me: and that is that *he* and the *three* Estates apply'd there the *design* of keeping up those *Canons* of *Councils* and provincial *Constitutions* that incapacitated *LAYMEN*, as *level'd* at the exclusion of the *King* himself, not only from his *Prerogative*, but from being in a *capacity* to exercise *ecclesiastical* Jurisdiction as *supreme* head of the *Church*, as I find by those remarkable words, YOUR GRACE BEING A LAYMAN.

B. You

B. You do well to take *notice* of that, and are therefore not to wonder at it if you should hear your Prince who was a *Dissenter* to the *Church* of *England*, and others concern'd for him, to have apprehensions of what prejudice might be meant him by some subtle Projectors of Laws, to *incapacitate* all *Papists* and *Presbyterians* from acting in any *Office* in *Church* or *State*, however many loyal Persons might be far from *intending* such prejudice thereby: *his Grace* being a *Papist*, or *Presbyterian*.

A. I must confess that if the *Kings* Power of *commanding* the *Services* of *all* his Subjects be inherent in him by the *Word* of *God*, and as such *declared* by Parliament, any Mens *endeavours* to take away that Power, may well be *imputed* to great incogitancy.

B. You say right: and I was hence induced to wonder, that after *the Act and Acknowledgment of his Majesty's Prerogative in the Choice of his Officers of State-Councellors and Judges* had thus passed in the *first Parliament* of *Scotland* in the late King's reign, *viz.* **The Estates of Parliament considering the great Obligations that lie upon them from the Law of God, the Law of Nations, the Municipal Laws of the Land, and their Oathes of Allegiance to maintain and defend the Soveraign Power and Authority of the King's Majesty, and the sad Consequences that do accompany an encrochment upon or diminution thereof, do therefore from their sense of humble duty declare, that it is an inherent privilege of the Crown, and an undoubted part of the Royal Prerogative of the Kings of this Kingdom to have the sole Choice and Appointment of the Officers of States and Privy Councellors, and Nomination of the Lords of Session as in former times, and that the King's sacred Majesty, and his Heirs and Successors, are by virtue of that Royal Power which they hold from God Almighty over this Kingdom, to have the full exercise of that Right,** &c. any Men could by a following *Act* of *Parliament* there be *incapacitated* to serve their *Prince* in those *Stations*.

I shall here tell you, that the *incapacitating* a few *Papists* or *Quakers Presbyterians* or *Anabaptists* to serve their Prince may to some seem *materia levis*, and that the *King* and his *Realm* cannot suffer much by the *disabling* a small party of men from publick employments. But it is otherwise. And let any one who hath observ'd but two or three of the late great *transactions* of the *age* here, as for instance, the late King's *Restoration*, the throwing out of the *Exclusion-Bill*, the turning of the *current* of *Faction* in our *Metropolis*, and consider how much in each depended on the *Talents* of ONE man, he will not wonder at him who shall affirm that the *incapacitating* of but one Man may be very fatal to the Common-weal.

I suppose you cannot have forgot the *Verse* you repeated to me out of the famed *Poem* of *Absolon* and *Achitophel*, viz. *So much the weight of one brave Man can do.* And Providence made use of his *weight* for the Publick good by the figure he made in his Prince's *Councils* notwithstanding the *Address* of the *Commons* to have him thence *removed*: as likewise of the *weight* of another of those noble Persons *heroical* loyalty in the administration of the Government, notwithstanding an *Address* from the Commons to his Prince to remove him from it.

I doubt not but you have read it in *Cromerus* his *History* of *Poland l. 7th.* that the *King* of *Poland* being dead, the *Kingdom* was offer'd to *Lescus* a *Nephew* of *Casimire's*, on condition he would banish *Govoritius*: and that *Lescus refused* the *Crown* rather then he would *banish* so *faithful* a *Councellor*. And you cannot be ignorant of the weight of one man in the *Nicene* Councel, I mean *Pophnutius*, who by *citing* those words of the Author of the *Epistle* to the *Hebrews*, *Marriage is honourable in all*, &c. turn'd the

ſtream of the whole *Councel* when they were going to give a Decree againſt the *marriage* of *Prieſts*.

You know of how much *weight* one Man would have proved in that place in Scripture, *Ezek.* 22. 30. *And I ſought for a Man among them that ſhould make up the Hedg and ſtand in the Gap*, &c. And that the *wiſe* man hath told us, that it was by the *wiſdom of ONE poor Man, that a City was deliver'd.*

You cannot but have obſerv'd, that almoſt all the great and noble *inventions* in nature, owe their births to a ſingle Perſon; and that particularly *one* poor *Man* by his Wisdom diſcover'd the *American* World. I need not mind you of the introduction of Laws by *one* Man in ſeveral of the old *Græcian* Polities; and of the great *Ocean* of the *Civil*-Law yet encompaſſing the World, having ſo *narrow* a Spring-head, as the head of a ſingle Perſon's introducing the *Laws* at *Athens*.

You have read of the *unus homo nobis cunctando*, &c. and of the *tantum potuit unius Viri fortuna & virtus.*

You know how Queen *Elizabeth* expreſs'd her *value* of the *weight* of *one* Man, I mean our great Navigator Sir *Francis Drake*, by her refuſing to *commiſſionate* competent Judges to try him for putting to death *Douriſhius* in *America*, and after an *Appeal* brought about it by the next of Kinn to him: and how afterward King *James* the *firſt* ſhew'd his value of the *Talents* and uſefulneſs of Sir *Walter Raleigh*, by employing him in his Service, with Power of the Life and Death of others, whilſt he lay under the higheſt *diſability*, by being attainted of High-Treaſon.

It would be ſomewhat like *pedantry* to digreſs too far into ſuch a *Common Place*; and wherein almoſt infinite inſtances will be tumultuarily crowding into any Mans thoughts. But I ſhall here further tell you, that from the notion of *ludit in humanis*, &c. and of him who *ſitteth* in *the Heavens* having ſome Diſablers *in deriſion* who *imagined* a *vain* thing, and from Heavens often chooſing to make *that Stone that the Builders rejected* and diſabled, *the Head of the Corner*: and from the ſevere threatning in St. *Matthew* againſt him *who ſhall offend ONE of theſe little ones who believe in Chriſt*, and from the caution there of *deſpiſing not ONE of theſe little ones*, you may occaſionally call to mind your *moral* Offices of *honouring all Men*, and of adoring the *Divine* Providence, when it makes ſuch Perſons its inſtruments in the preſerving of Nations, who by any *ſyſtemes* of *Politics* or Laws were *diſabled* from being ſuch.

A. I thank you for the occaſion you have given me to meditate about this, and do think that *Man* having the *ſtyle* of *vain* apply'd to him in *Job. c.* 11. *v.* 12. *Vain Man WOULD be WISE, tho Man be born like a wild Aſſes colt*, and there made a *politic-would-be*, and not only reſembled to a Brute, but made to be *born* like one, and of Brutes like to the *Aſs*, and of *Aſſes* to the *wild* one, and even of ſuch to the *wild* Aſſes *Colt*, and being thus under an incurable complication of *natural* Incapacities, ought to be very careful how he goes about, by any *artificial* incapacities, to afflict or reproach any of his Race that are *born* to too many, and much more to *limit* the *Wiſdom* of Providence in the *choice* of its *inſtruments*, and to take the work of the *cicuration* of the *untamed* World out of God's hand.

And here I ſhall afford you ſome amends for the pleaſant hiſtorical hints I juſt now had from you, by obſerving to you in ſhort what partly makes for your purpoſe; that tho as *Palæotus* in his learned *Tractate de Nothis ſpuriiſque filiis* hath mention'd, ſuch were *tam Moſaicâ quam Pontificiâ ac Civili lege omnino deteſtabiles*, and as infamous *diſabled* particularly by the

the *Canon* Law from eccleſiaſtical Dignities, yet to ſhew how theſe *outcaſts* of the *Law* were by Heaven rendered inſtrumental in the Government of the World, he there ſaith, *Notantque hi qui hiſtorias ab origine Mundi ſunt exorſi, artes omnes & ſcientias ab hujuſmodi ſobole, à filiis ſcilicet* Lamech *fuiſſe inventas, & ab eis ſubtiliora omnia & utiliora excogitata*: and he concludes his Book by *inſtancing* in the *Names* of many *Europæan* Kings and Princes and Roman *Emperors*, and particularly of *Conſtantine* the great, and likewiſe of *Popes* of *Rome*, who were of the baſe-born *Claſs* of Mankind.

Both God Almighty and our Princes, can make *Veſſels of Honour* of what *Clay* they pleaſe, and *place* them *where* they will.

B. You find it DECLARED in the *Statute* of the 31*th.* of *H.* 8. *c.* 10. that **It appertaineth to the King's Prerogative Royal to give ſuch Honour, Reputation and Placing to his Councellors, AND OTHER his Subjects, as ſhall be ſeeming to his moſt excellent Wiſdom**; and ſo when King *James* gave Sir *Walter Raleigh* tho *dead* in *Law*, and labouring under the higheſt *diſability* beforemention'd, the Power and Honour of commanding the lives of others, he did but what *appertain'd to his Prerogative.*

And thus when King *Harry* the 8*th* by his *Prerogative*, like the *Sun* both raiſing and gilding a poor *Vapour*, made *Cromwel* who was the Son of a Black-ſmith *Lord Privy-Seal*, and likewiſe enabled him, tho a *Lay man*, to to be his *Vice-gerent* for *eccleſiaſtical* Cauſes, and however *incapacitated* by ſome poſitive humane Laws to make that figure, he did but *uti Jure ſuo.*

And I ſhall tell you as to the ſubject of the *weight* of *one* Man, or the conſequences of *diſabling* one Man, that we were upon; if you conſider how much the exceſſes of the *Papal* Uſurpations, and the *over-ballance* of the *Monaſtic* Revenue in the Nation, were removed by the *parts* and *endowments* of *Cromwel* the *Vice-gerent* in Matters Eccleſiaſtical, you may eaſily imagine that if the meaſures of the *Canon-Law* and *Canoniſts* and the long receiv'd *cuſtoms* or any *humane* Law had then prevail'd for the *diſabling* of *Cromwel cum effectu* from bearing *Office* or *intermedling* in *Eccleſiaſtical* Juriſdiction as the Kings *Vice-gerent*, what a *Church* of *England* we ſhould have at this time enjoy'd.

You may well imagine how much the *Diſabling* of *Lay-men* from intermedling in eccleſiaſtical *Juriſdiction* had paſſed for a *general* Cuſtom here, when Biſhop *Downham* in the *Defence of his Conſecration Sermon* p. 185. ſaith that *as for lay-Chancellors or Commiſſaries, the Biſhops in the times of S.* Auſtin *and S.* Ambroſe *had none: and that not ſo much as the Steward of a Church might be a Lay-man:* and when the *Puritan* Writers did ſtill upbraid our Diſcipline on the account of the incapacity of *Lay-men* to be Biſhops Chancellors, as adjudged by the ancient *Canons*; and with the *Canon* of *indecorum eſt laicum eſſe vicarium epiſcopi*, &c. and by which *Canon* the Biſhop who made a *Lay-man* his Vicar, was declared to be *contemptor Canonum.*

But it was the *Regal* Power of *Diſpenſing* with the *Canons* and *Cuſtoms* that *diſabled* Lay-men from intermedling in *eccleſiaſtical* Juriſdiction, that laid the *foundation* of the Reformation in *Harry* the 8*th*'s time, as it was the ſame Power of diſpenſing with the *Canons* and *Cuſtoms* that *diſabled* Clergy-men from intermedling in *ſæcular* Employments, that perfected the *ſuperſtructure* of it in the reign of *Edward* the 6*th* that young *Joſias*, as was before mention'd.

Fuller tells us in his *Church-hiſtory* that *Harry* the 8*th*'s *making a Lay-*

man

man his Vicar-general was the greateſt inſtance of his eccleſiaſtical Power that ever was given. And my Lord *Herbert* in his *Harry* the 8*th* doth ſeem to reflect on *Cromwel*'s not being thought capable of that Office: for his words on his being made the King's Vicegerent are, *It was thought ſtrange by the People, becauſe there was no Example of any Kings of* Iſrael *tho lawfully in their own Perſons enjoying the mixt Power of the Temporal and Spiritual, or of the Pope's, having deputed Eccleſiaſtical Power to a Lay-man.* But as to his ſaying that there was no *Example* of the Pope's deputing Eccleſiaſtical Power to Lay-men, I ſhall obſerve that his Lordſhip had not conſider'd that according to the *Gloſſe in C. bene quidem.* Diſtin. 96. *Laicus poteſt excommunicare ex Papæ delegatione:* and that tho a *Biſhop* cannot by the *Canon*-Law *delegate* his Power to a *Lay-man*, for that a *Biſhop* is not above the *Jus Commune Poſitivum* of the Pope, yet the *Canoniſts* hold that the Pope by the Plenitude of his Power may *diſpenſe* with his own *Laws*, and by ſo doing delegate the Power of *Excommunicating* to *Abbeſſes*, altho *jure Communi*, as not having the *Power* of the *Keys*, they are *diſabled* from ſo doing: and that Pope *Urban* the Second, conſtituted a Lay-man, *Roger* Earl of *Sicily* and his *Heirs*, his *Legates a latere* in that Kingdom by way of *Inheritance* for ever: and that our *Henry* the Second writing to the Pope to recall *Becket*'s Legatine *Power*, and to confer it on the Archbiſhop of *York*, the Pope refuſed ſo to do, but offer'd the *Legatine* Power to the *King* himſelf, and ſent Letters to the King for that purpoſe: but which the King in ſcorn threw away.

The *Legatine* Powers are *de jure Communi*, as the *Canoniſts* tell us, very great; and allow the *Legates* to viſit or cauſe to be viſited by ſuch as they ſhall think fit, all Churches, Monaſteries, Colleges, Univerſities, Hoſpitals, and do authorize them to make new Statutes and Orders, and not only to receive Appeals from ordinary Judges and Delegates, but to judge and decide all Eccleſiaſtical, Civil and Criminal Cauſes, and that ſummarily and *ſine formâ & figurâ Judicii*; to make Priſoners of Biſhops, and ſend them in Cuſtody to the Pope, to beſtow Benefices that were vacant, to unite Churches, to interpret the Mandates of the Pope: and if the Pope hath entruſted any thing to be done by them, yet to entruſt the doing thereof to others, to execute all their Juriſdiction in Places *exempt* as well as not exempt, and to *diſpenſe* in all Caſes wherein they are not Prohibited, and to exerciſe the *Juriſdiction* of granting *Indulgences*, and to *diſpenſe* with *pluraliſts*, and with the *incapacity* of *Sons* immediately *ſucceeding* their *Fathers* in Church-Livings, and to give Abſolution to the Excommunicate in many Caſes reſerv'd to the *Apoſtolick* See, and likewiſe in many Cauſes inflictive of Excommunication *ipſo jure*, and in many Caſes to reſtore ſuch as are *depoſed* and *degraded*, and to rehabilitate them even by *reſtoring* them to *Fame*.

All theſe *Branches* of *Authority*, with many others not named here, were it ſeems offer'd by the *Pope* to our *King*: but which he holding as *Vicegerent* to the *King* of *Kings*, and by his *Word*, might well refuſe their *tenure* from the *ſervus ſervorum*, and by his *Bulls*.

All our Roman-Catholick Princes having made an inroad on the *Papal* incapacitating *Canons* by way of *Diſpenſation*, when they made their Lay-Judges *Super-Intendents* over their *Biſhops*, and who were by Lay-men required to *Abſolve* ſuch who were *diſabled* by *Excommunication*, and to receive their bounds and meaſures in Eccleſiaſtical Proceedings by *Writs* of *Prohibition*, and *Conſultation*, and *Attachment* iſſued out by Lay-men; the exerciſe of the *Regal* Power in Eccleſiaſticks diſtributed and diſpers'd among ſo many *Lay* hands, did not ſeem ſo powerful nor invidious as when the

united

united Beams of Eccleſiaſtical *Vice-gerence* met in the Miniſtry of *one* Lay Perſon, and dazled the Eyes of the whole Kingdom, and when (according to the Power that was 37°. *H.* 8. *declared* by the Parliament to be given to the King by *Holy Scripture*) he made *Cromwel* his Vice-gerent for the Eccleſiaſtical Juriſdiction.

But as that *Statute* intimating that **the Councils and Conſtitutions Provincial** that ordain'd, **that no Lay-man ſhould exerciſe or occupy any Juriſdiction Eccleſiaſtical, did ſtand and remain in their effect not aboliſh'd by his Grace's Laws, and did ſound to appear to make greatly for the uſurped Power of the Biſhop of** Rome, **and to be directly repugnant to his Majeſty as Supreme Head of the Church, and Prerogative Royal, his Grace being a Lay-man, altho ſuch Decrees, Ordinances, and Conſtitutions** were by **the Statute made in the 25th year of his Reign, intended to be utterly aboliſh'd, fruſtrate**, &c. but yet that **the contrary thereunto,** being not **uſed by Archbiſhops, Biſhops,** &c. *i. e.* that they had not all that while or ſince that *Statute* of the 25th of his *Reign* committed the exerciſe of Eccleſiaſtical Juriſdiction to *Lay-men*; did or might give **occaſion to ſome Evil-diſpos'd perſons to think and little regard the Proceedings and Cenſures Eccleſiaſtical made by his HIGHNESSE and his Vice-gerent, Officials, Commiſſaries, Judges, and Viſitors being alſo Lay and Married men to be of little or none effect, whereby the people gathereth heart and preſumption to do evil, and not to have ſuch reverence to your moſt Godly Injunctions and Proceedings, as becometh them**, &c. So I leave it to you to conſider how the *diſabling* of any *Subjects* by reaſon of *Religionary* Heterodoxy to *ſerve* their *Prince*, *did or might give occaſion to ſome evil-diſpoſed Perſons* to attempt the *diſabling* of their *Prince* on the ſame account, as I before *hinted* it to you: and as the popular incogitancy of the *Power* given by *God* extending to *all ſuch Perſons as ſhould be employ'd under the King*, producing the *irreverence* of their ſurmiſes of the *incapacity* of the *Officials* and *Viſitors* employ'd by the *Vicegerent* (and conſequently of the incapacity of the *Vicegerent himſelf*) did naturally terminate in their *gathering heart and preſumption to do evil*, and to ſurmiſe the King's being *diſabled* to *exerciſe* all manner of *Eccleſiaſtical* Juriſdiction: and to do that which was *directly repugnant to his Majeſty as Supreme Head of the Church, and to his Prerogative Royal, his Grace being a Lay-man*, how you ought ſtill to preſerve a tenderneſs in your thoughts for that *Prerogative* Royal given him by *God's Word* of *Commanding* the *Services* of all his Subjects by what Laws or Conſtitutions ſoever *de facto* incapacitated. And by the *gradual* Proceedings I have now mention'd, you ought with horror to think of the *incapacitating* any *one* Subject to *ſerve* his *Prince*, as of the firſt ſtep from a Precipice.

A. You have provided variety of Entertainment for my Conſideration, and have my thanks for it. But ſuppoſe I ſhould be ſo Curious and *Inquiſitive* as to ask where in God's *Word* that *Power* is given to *Princes* to employ ſuch Perſons as they ſhall think fit in their ſervice, according to the purport of that *Statute*?

B. You may likewiſe ſuppoſe that you would then find my *Genius* ſo *inquiſitive* as to ask you *where* you have been at *Church* of *late* years. For you could then go to no *Church* in *England*, *Scotland*, or *Ireland* without hearing St. *Paul's* **Omnis anima** ſpoken of, **Let every ſoul be ſubject to the higher Powers**, *whether he be Apoſtle, or Evangeliſt, Prophet, Prieſt, Clergy or Layety, whether he be of the People diffuſive or repreſentative, and the like.* And as the well-drawn *Effigies* of a man ſeems to look on every one in the Room, ſo hath the Picture of the *Regal* Power drawn by the

Divines of the *Church* of *England*, appear'd to caſt its Eye on every one, and been made as it were *Vocal*, and ſaying to every one, **For he is the Miniſter of God to thee for good.** And the good old Book call'd *God and the King* that you have read over and over, hath told you, *that the Bond of the King's Subjects Obedience to his Majeſty is inviolable, and cannot be diſſolv'd.*

And indeed the thing being ſo plain by the *Law* of *Nature*, which being *written* in man's *heart* is the very *ſame* (ſo far forth as it is yet undefaced) with the *Law* of *God* reveal'd in the *Word*, it is not *tanti* to raiſe *Moot-Points* about this, relating to *Scripture.*

I doubt not but you remember it in my Lord *Herbert's Harry* the 8th, that there being a *Rebellion* of many of the *Commonalty*, A. 1536. and the *Rebels* ſending the *King* their *Grievances*, and one whereof was, *That his Grace had ill Councellors, and of mean Birth* (*among which* Cromwel *was not forgotten*) *and the King ſending an Anſwer penn'd by himſelf as to their Grievances*, he did therein upbraid them for *medling* in the *choice* of his *Counſellors*, and command their acquieſcence therein on the grounds of Nature and of *his being their Natural Liege-lord.*

A. Well *Sir*: Let it for the preſent paſs as a *datum* or *conceſſum*, as you will have it, that the *Obedience* of *Subjects*, in *ſerving* their *Prince* is founded on the grounds both of *Nature* and *Scripture.* And I ſhall moreover allow it to you, that if you had an *Enthuſiaſt* to deal with, and ſuch who as you ſaid *do outrage the* 13*th of the* Romans *out of the* Apocalypſe, you might out of *Brightman's Revelation of the* Apocalypſe, ſhew him out of that part of *Holy Scripture* ſufficient Authority for the King's particularly making *Cromwel* his *Vicegerent.* For he there on the 14th *Chapter*, and the 17th, and following Verſes, ſaith, *This Angel is* Thomas Cromwel *who lived in the days of* Harry *the* 8*th, that moſt mighty King, and was a man of great renown and place in our Kingdoms, being the Earl of* Eſſex, *and Lord Keeper of the Privy Seal*, who came out of the Temple, *and being a ſincere favourer of pure Religion.* He had a Sickle in his hand, *being made the King's Deputy in all Eccleſiaſtical Matters: and it was a ſharp one, as with which he ſets ſtoutly and deliberately to his work, and yet he had no Crown or Diadem to grace his head withal, being a Miniſter rather to put another Man's Power in Ure, then any that wrought by his own Power and Authority.* And he on *Verſe* the 18th makes the *other Angel* to be a *Martyr:* viz. *Tho. Cranmer*, and refers the meaning of the words, *He cryed with a great voice to him that had the Sickle*, to *Cranmer, becauſe* (ſaith he) *in the days of* Harry *the* 8*th, he inflamed the mind of* Tho. Cromwel, *by his words, with a deſire to make a Vintage.*

B. I thank you for diverting me with that *paſſage* of *Brightman:* but I can refer you to another Writer of our Church, whoſe Authority will go further with us then *Brightman's*, and who hath recorded it, that the great figure that *Cromwel* made both in the Church and State, and his and *Cranmer's* acting together in concert, and by joynt Councels both in Church and at the Helm of State, was ſo highly fortunate to the Reformation. You may find this obſerved by Archbiſhop *Parker* in his *De Antiquitate Eccleſiæ Britannicæ*, p. 530. where he ſaith, *Namque profligato Papa, & ſuſceptâ Eccleſiæ Anglicanæ defenſione, curâ & tutelâ, Rex excelſiſſimus, & multarum rerum uſu peritum,* Thomam Cromwellum *Vicarium ſuum in ſpiritualibus generalem deſignavit. Hic cum* Thoma Cranmero *Archiepiſcopo tanquam in puppi ſedit, clavumque Eccleſiæ Anglicanæ tenuit, proramq; à papali littore avertit, & in Chriſtianum portum reduxit.*

A. Was,

A. Was, *Vicar-general to the King in Spirituals*, Cromwel's *ſtyle* for his *Office*, as the Archbiſhop there termed it.

B. I am apt to think it was not. I never ſaw any Copy of his Patent or Commiſſion for it. The Acts of Parliament in *H.* the 8th's time *ſtyle* him, *The King's Vicegerent*, &c. And the *Statute* of 37°. *H.* 8. beforemention'd that ſpeaks of Biſhops *Vicars-General* uſeth only the *Style* of *Vicegerent* for *Cromwel's* Office. And I have obſerv'd in his *Injunctions* to the *Clergy*, that he *ſtyles* himſelf **Lord Privy Seal, Vice-gerent to King Henry the 8th, for all his Jurisdiction Eccleſiaſtical within this Realm**, &c.

But the word *Vicar* being perhaps by the *envy* of the *Monks* put on him and his *Office* in common Diſcourſe (the word *Vicar* in the *Proper* ſignification of it, ſignifying a Servant to a Servant, according to that in *Martial*, *Eſſe ſat eſt ſervum*, *jam nolo Vicarius eſſe*) the Archbiſhop ſpeaking *Cum vulgo* might then call him the King's *Vicar-general*, and ſo others ſince.

I ſhould before have mention'd what he ſaith, *p.* 323. ſpeaking of *Cromwel*, *Inter hunc & Cranmerum ſummam neceſſitudinem Evangelium conciliavit*, *ut dum ille Experientiâ*, *hic Doctrinâ cunctos antecelleret*, *tum utriq; Regi intimi & chari eſſent. Ex horum Conſilio, & impiis atque odioſis Papæ & Wolſæi Cardinalis Actis ſummum ſupplicium, & exitium Romanæ Curiæ divinitùs paratum eſt.*

A. You have enough minded me of the King's *diſpenſing* with the *diſability* incurr'd by the *Canons* both in the Caſe of *Cromwel* a *Lay-man* intermedling in *Eccleſiaſtical* Matters, and of *Cranmer* a *Clergyman* intermedling in *ſecular*, proving ſo neceſſary to the *Reformation*, and accordingly as Queen *Elizabeth's* diſpenſing with *diſability* proved ſo to the Eſtabliſhment of the preſent *Hierarchy* of the *Church* of *England*. And I ſhall moſt ſeriouſly conſider what the *Act* of the 37th of *H.* the 8th, hath in ſuch plain and *liquid* terms *declared* of *the Power given to the King by Scripture*, and to **all ſuch Perſons as he ſhall appoint**, *to exerciſe Eccleſiaſtical Juriſdiction*, however incapacitated ſo to do by lawful Canons and Conſtitutions, and which were by that Eminent *Juſtitiary* you mention'd held Equivalent to *Acts* of *Parliament*: and ſhall grant that if never ſo many *Acts* of *Parliament* had attempted to deprive the King of a Power inherent in him by *Scripture*, ſuch attempt would be *nugatory*, and the *fremuerunt gentes* againſt it, would be but the *Peoples imagining a vain thing*. And I ſhall conſider it how far by clear and neceſſary Conſequences, and no *wire-drawn* ones, it follows from what is *declared* by this *Act* of *Parliament*, as to the *King's* being authorized by *Scripture* to chooſe *ſome* ſorts of *Officers* to ſerve the Crown in Church and State, that he is ſo authorized to chooſe *others*; in like manner as you mention'd it to me *declared* by the *Scotch* Act of *Parliament*, that *the King by virtue of the Royal Power he holds from God All-mighty is to have the SOLE choice and appointment of the Officers of the State*, &c. But (I Pray) do not many other *Acts* of *Parliament* in *Harry* the 8ths time, whereby the Royal *Prerogative* is ſo much advanced, and particularly that of the 25th of *Harry* the 8th, that ſets up the *Diſpenſative* Power, ſeem to make it *depend* on *Statute-Law*? And may it not ſeem to be more than a *flaw* in the *Diamond* of Prerogative, and a great *depretiating* of it in cutting it out (as it were) into four, by making its Eſtabliſhment depend on the King and three Eſtates?

B. I ſhall therefore here once for all tell you, that the occaſion of ſo many mens *miſtake* in thinking ſo many of thoſe *Acts* of *Parliament* in *Harry* the 8th's time prejudicial to Prerogative, as ſeeming to found it on Statute-Law, is their not conſidering that ſuch *Statutes* were but *declaratory* of old Laws, and not *introductive* of new ones. My Lord Primate

Bramhal

Bramhal in his *Schism guarded*, p. 155. saith, *I profess clearly I do not see what advantage* Henry *the 8th could make of his own Laws, which he might not have made of the ancient Laws, except only a gawdy Title of Head of the English Church which survived him not long, and the Tenths and first-fruits of the Clergy*, &c.

But you may as fully take notice how *Harry* the 8th throughout his great *Declarative* Laws so often *declares* in effect his *Regal* Power to be given him by God. My Lord *Coke* in his *Caudry's Case*, instanceth in the famous *Statute* of 24° *H.* 8. c. 12. and calls it *declaratory of the ancient Law*, and you see how it is *declared* there, That the King is by the goodness of God furnish'd with Prerogative, &c. And the *Statute* of 37° *H.* 8. begins as I shew'd you with the three Estates, DECLARING, That the King's Majesty is and hath always justly been Supreme Head in the Earth of the Church of England by the Word of God. You know too how the *style* runs in another of his *Acts* of *Parliament*, viz. The Bishop of Rome and See Apostolick, contrary to the great and inviolable Grants of Jurisdictions by God immediately to Emperors, Kings, and Princes, &c. And thus tho there are various *Statutes* in his Reign, and particularly that of the 25th *year* of his Reign, *c.* 19. by which it was Enacted, That the King's Highness shall have Power and Authority to nominate and assign at his pleasure Two and thirty persons, whereof Sixteen to be of the Clergy, and Sixteen of the Temporalty of the Upper and Nether House of the Parliament to view, search, and examine the Canons, Constitutions and Ordinances Provincial, and that such of them as the King's Highness and the said Two and thirty or the Major part of them shall deem and adjudge worthy to be continued, kept and obey'd, shall be from henceforth kept obey'd and executed within this Realm, so that the Kings most Royal assent under his Great Seal be first had to the same, &c. and tho according to the ancient usage of the Realm as well as to those Canons *Lay-men* were not only incapacitated to make Ecclesiastical Constitutions and Canons, but *Kings, Bishops, or Noblemen who believed that the Decrees of the Bishops of* Rome *may be violated or shall suffer them so to be*, are in the Canon Law *anathematized*, yet as this *enacting* Clause was made on the *Clergy's* Petition to the *King* (as the *Preamble* of the *Act* mentions) that those Constitutions and Canons may be committed to the Examination and Judgment of his Highness, and of Two and Thirty persons of the King's Subjects, whereof sixteen were to be of the Upper and Nether House of the Parliament, of the Temporalty; and all the said Two and thirty persons to be chosen and appointed by the King's Majesty, &c. and be empower'd to do what I mention'd out of the *enacting* Clause (and whereby the *King* alone was in *effect* both according to the *Clergy's* Petition, and the *enacting* Clause vested with the *jus vitæ & necis* of the *Canons*) so in a Memorable *Epistle* of *Harry* the 8th, Printed before the *Reformatio legum Ecclesiasticarum*, and intended as a draught for a Publication or *Promulgation* of the King's new Ecclesiastical Laws, after the draught of them had been by those Clergymen and Laymen prepared for his Royal Consideration, and been by him establish'd, he there declares his Power of so doing to be pursuant to his *Supreme Headship of the Church of England* recogniz'd, quemadmodum divini atque humani juris ratio postulat, and mentions, *the Power granted to him and his Ancestors* ipso jure divino, as *recognized*, and applies to himself the words *Sapientiæ*, cap. 7. Audite Reges & intelligite quoniam data est a Domino potestas vobis, &c. and *founding* his *Power* of making Ecclesiastical Laws on that *jus Divinum*, he saith, En vobis authoritate nostra edictas leges damus, &c.

And

And here I ſhall tell you that as *my Lord* Coke *in* Cawdry's *Caſe* calls the *Act* of the 24*th* of *H.* 8. beforemention'd, An *Act declaratory* of the *Ancient* Law; ſo he likewiſe doth the *Act* of the 25*th* of his Reign, *c.* 21. that ſo much props up the *Diſpenſative* Power. And I aſſure you that they look but at a few things in general, and in that *Statute* in particular, who think that the *Diſpenſative* Power *inherent* in the King loſt any ground thereby: and he who takes the *Statute* altogether, will find that that Power if it *ſeem'd* in any words to go back from it ſelf, was but by ſuch retreat to leap the further forward.

For if you will take a *glancing* view of the intent of that *Statute* to that end, you will ſee that inſtead of *that* Law making it ſelf to be the *Fountain* of the *Diſpenſative* Power, it makes the Diſpenſative Power to be the very *Fountain* of a great part of the Common Law it ſelf: for its ſtyle gives you the figure of our *Laws*, as either **devised, made and obtain'd within this Realm for the wealth of the ſame, or ſuch as by SUFFERANCE of your Grace and your Progenitors** (which is a *Diſpenſation* by way of *Permiſſion* or *Connivence*) **the People of this your Realm have taken at their free Liberty by their own Conſent to be uſed among them, and have bound themſelves by long uſe and Cuſtom to the obſervance of the ſame,** &c. And the King in his Legiſlative Capacity having with the conſent of the three Eſtates ſuperſeded the *Pope*'s Diſpenſative Power that had ſo long Uſurp'd on the King's Laws, and having provided that the Money that ſhould be paid as *Fees* for *Diſpenſations* ſhould be *rais'd* and *moderated* by their Conſent, obtain'd from them a *Clauſe* in the *Act* containing ſo great a *deference* to the *Diſpenſative* Power of the *Crown*, as that after the *Act* had authorized the *Archbiſhop* of *Canterbury* and his *Succeſſors* **to grant ſuch Diſpenſations, Licences and Faculties as were accuſtomed to be had from the See** of Rome, **and not grant any others till the King, his Heirs and Succeſſors, or their Councel were firſt advertiſed thereof, and determined whether they ſhould paſs:** It *Provided* that **if it were thought and determin'd by the King, his Heirs and Succeſſors, or their Councel, that Diſpenſations, Faculties, Licences, or other Writings in any ſuch Caſe AMOUNT** ſhall paſs, that then **the ſaid Archbiſhop or his Commiſſary having Licence of His Majeſty, his Heirs and Succeſſors for the ſame ſhall diſpenſe with them accordingly: and in Caſe of his refuſing to diſpenſe, that any other two Biſhops, the King, his Heirs and Succeſſors ſhould nominate, ſhould be appointed to diſpenſe in ſuch Caſes.** And this *Act* with all the *Clauſes* in it, you find reviv'd by the 1*ſt.* of *Elizabeth*, c. 1.

The Pope's *rehabilitations* did *cuſtomarily* extend to *Lay-men* as well as *Clergy-men*, and that particularly in caſe of *Heterodoxy* in Religion, then call'd *Hereſy*, which both by ancient *uſage* and *Acts* of *Parliament* loaded men with various *incapacities*. And his relaxing the *incapacities* that relate to Clergy-men, any one may ſee by the *Taxa Cameræ* and the *Fees* thereby payable, *viz.* in the *Age* of thoſe who were to take Orders and were defective in ſome of their Members, and in the *Caſe* of Clergy-mens incapacity incurr'd by *irregularity*. But after this *Act* of the 25. of *H.* the 8*th*, had ſhew'd the World the Authority the King had to *rehabilitate* and *diſpenſe* here in his *own* Country both as to matters *cuſtomarily* diſpens'd with at *Rome*, and ſuch as were *not* ſo, and how *ſmall* the *Fees* were for the ſame, the bringing *rehabilitations*, and **Perinde valere's** from *Rome* to *England*, was like carrying *Coals* to *New-Caſtle*.

A. I was not ſatisfy'd with your extending the *King's* Power of Diſpenſing here as far as the *Pope's* reach'd, and it ſeems you extend it further. I hope you intend not to bring in here the *Tax* of *the Apoſtolical Chancery*, and which Mr. *Craſhaw* tranſlating into *Engliſh* in the *year* 1625. call'd it, *The Rates of the Pope's Cuſtom-houſe*, and wherein are contain'd *Indulgences* for *Sins* paſt, preſent and to come, and ſuch a kind of *Pardoning* Power as in *The hiſtorical Narration of the firſt Fourteen years of King* James, appear'd to that King ſo ſcandalous in the *Caſe* of the *Draught* of the *Earl* of *Somerſet's* Pardon, and in which Sir *Robert Cotton* having been deſired by the *Earl* to find out the largeſt *Pardon* that former *Preſidents* could ſhew, brought him one that was made by the *Pope* to Cardinal *Wolſey*, and by a *fac ſimile* after which, the Draught of the *Earls* ran for *Pardoning* all manner of *Felonies* and *Treaſons* committed and to be committed.

B. Premiſing to you that the *Chriſtian* offices do more call on you to mind what *Sins* you *diſpenſe* with in your ſelf, then what the *Pope* diſpenſeth with in others, and that this *preſent* Pope hath ſpoil'd the *Trade* of *raillery* about *Indulgences* by *ſpoiling* the *Trade* of them, and *damning* ſo great a *number* of them, and that in his vaſt Supplies of Money toward the taking of *Buda*, the *Souls* in *Purgatory* contributed nothing, and that Sir *Paul Ricaut* in the *Life* of *this Pope*, having done *right* to his *Vertue*, in mentioning *his having ſuppreſs'd an Office of the Virgin* Mary, *and a multitude of Indulgences*, hath further judiciouſly obſerv'd, That *Wiſe men at the Councel of* Trent *finding that the Doctrine of Indulgences was not ſolid, did but ſlightly touch it; and tho yet it was the CHIEF matter for which that Councel was aſſembled, nothing was determin'd therein, but only that Indulgences be uſed with ſuch Moderation as was approved by the Ancient Cuſtom of the Church, that is, not at all*; I ſay *premiſing* all this, I ſhall mind you that I have ſaid enough already to let you ſee that it is only the *ancient* Diſpenſative *Juriſdiction* of the *Crown* that I direct you to prop up, and more particularly with reſpect to the Caſe before you.

While we are conſidering the *Obligation* of an *Oath*, it were pity that the thoughts of either of us ſhould be *embarras'd* with *Moot-points*; and ſo without troubling you with a reference to *More*, f. 463. *where all the Power of the Pope is not given to the King by the 25th of* H. *the 8th, but is extinct*, Hallywel's *Caſe*; or to the quite *contrary* in *More* 542. *Armiger's Caſe*, I ſhall moſt conſult the eaſe of your thoughts by directing them to what interpretation my Lord *Coke* in *Cawdry's* Caſe gives as to the words of the *Statute* of 1° *Eliz.* and where he ſaith, *that that Act doth not annex any Juriſdiction to the Crown but what was of right or ought to be by the Ancient Laws of this Realm, parcel of the King's Juriſdiction*, &c. *and which lawfully had been or might be exerciſed within the Realm. The end of which Juriſdiction, and of all the Proceedings thereupon, that all things might be done in Cauſes Eccleſiaſtical to the Pleaſure of Almighty God, encreaſe of Vertue, and the Conſervation of the Peace and Unity of the Realm, as by divers places of the Act appears. And therefore by this Act no pretended Juriſdiction exerciſed within this Realm being ungodly, or repugnant to the ancient Law of the Crown, was or could be reſtored to the Crown according to the ancient Right and Law of the ſame.*

And here I may tell you, that as the *Pope* did often *diſpenſe* with *incapacity* incurr'd by his *Poſitive* Laws, and that even in the uſe of the Power of the Keys, as by his delegating the Power of Excommunication to Laymen, and to Abbeſſes as aforeſaid; ſo our *Kings* did *anciently* by their *Letters Patents* and *Charters*, grant *Power* to thoſe who were no *Biſhops, Ordi-*

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naries, or Eccleſiaſtical *Judges* or *Officers* to inflict Eccleſiaſtical *Cenſures* of the *greater Excommunication* on Offenders, and that for *Cauſes* not merely *Spiritual* or *Eccleſiaſtical* with Power to *Certify* them into *Chancery*, and thereupon to obtain *Writs de Excommunicato Capiendo*, as Mr. *Prynne* tells us in his *Animadverſions on the Fourth part of the Inſtitutes*, and there *cites* the *Preſident* of *Edward* the Third, thus empow'ring the *Chancellor* of the *Univerſity* of *Oxford*, tho a *Lay-man* ſo to do, and ſo to Puniſh *Breakers of the Peace, Offenders againſt the Statutes, Privileges and Cuſtoms of the Univerſity, and all Foreſtallers, and Regraters, and Sellers of corrupt Meat and Wine, and to Excommunicate ſuch who refuſed to cleanſe the Streets from filth, and to Pave them before their Doors, and this* (he ſaith) *was confirm'd by ſundry ſucceeding Statutes of our Princes.*

In what *particulars* it is by this *Statute* of the 25. of *H.* the 8*th.* warranted that the *King, his Heirs and Succeſſors* may *diſpenſe* with *Perſons* and in *Cauſes* that the *Papacy* was never accuſtomed to diſpenſe in, I ſhall not trouble you or my ſelf to enquire: but ſhall tell you, that Mr. *Nye* in his *Book* call'd *Two Acts of Parliament*, and wherein are contain'd his *Obſervations on the Oath of Supremacy*, doth in *p.* 164. *cite* this *Statute* of 25. *H.* 8. *c.* 21. and thereupon ſay, *the King's Majeſty may diſpenſe with any of thoſe Canons or Eccleſiaſtical Laws*, (meaning the King's Eccleſiaſtical Laws) *indulge the Omiſſion of what is enjoyn'd by them: make void the Crime and remove the Penalty incurred by breach of them: yea, and give faculty to do and practice otherwiſe, any Synodal Eſtabliſhment, or long uſage to the Contrary notwithſtanding, in what offends not the Holy Scripture and Laws of GOD.*

And therefore when our *Soveraign* in the courſe of his *Eccleſioſtical* Supremacy, doth only *diſpenſe* with *incapacity*, we are ſure he goes not to the *height* of the Diſpenſative Power juſtify'd in him by that *Statute*: nothing having been more *cuſtomary* to the *Papacy* then *rehabilitation.*

It was upon the *Revival* of this *Statute* of *Harry* the 8th, by that *firſt* of Queen *Eliz.* c. 1. that *ſhe*, according to the *Papal* cuſtom of *diſpenſing* with the *Commutation* of *Penance*, did in her Articles in the *Synod* began at *London*, A. D. 1548. eſtabliſh one *De moderandâ ſolennis Pœnitentiæ Commutatione*, whereby ſhe orders, that *ſuch Commutation ſhall be but ſeldom and for weighty Cauſes, and when it ſhall appear to the Biſhop that that way is the ſafer to reform the guilty Perſon, and that the Commutation-Money be employ'd to Pious uſes.* And then follows *the Title*, **De Moderandis quibuſdam Indulgentiis pro Celebratione Matrimonii abſque trinundinâ denunciatione quam bannos vocant Matrimoniales**, where you will find ſhe makes *Faculties* and *Indulgences* all one.

And as I have ſhew'd you how ſhe thought it neceſſary for the ſafety of her Subjects Conſciences to exerciſe her Diſpenſative Power of *interpreting*, and of relaxing *diſabilities* occaſion'd by the very firſt *Statute* of her *Reign*, and how ſoon ſhe put the *Diſpenſative* Power of thoſe kinds in practice, which by that *Statute* were reſtored and united to her Imperial Crown, ſo I may obſerve to you *that* ſhortly after the making of the *Second* Statute in her *Reign*, viz. That for **Uniformity of Prayer and Adminiſtration of Sacraments**, which puniſheth with *Premunire*, *Sequeſtration*, *and Deprivation*, *and Excommunication* (which while it is depending is ſo variouſly incluſive of *diſability*) the not uſing the *Book* of *Common-Prayer* as Publiſh'd in *Engliſh*; ſhe by her *Letters Patents* dated the *6th* of *April* in the Second *year* of her *Reign*, and *A.* 1560. alloweth the uſe of **Latine Prayers to the Colleges of both Univerſities**, and to Eaton and Win-

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cheſter **Colleges**, with a particular *Non-obſtante* to that *Statute*: a *Copy* of which *Letters Patents* may be ſeen in Biſhop *Sparrow's Collection of Articles*, &c. And I have before acquainted you in *general*, how in her *Letters Patents* for the *Conſecrating* new *Biſhops*, ſhe expreſly *diſpens'd* with *incapacity*.

But what may perhaps ſeem to you as a new *Indication* of her being the better able to *diſpenſe* with it, is an *Inſtance* I ſhall give you of her *making* incapacity by her *Supreme* Eccleſiaſtical *Power*. The inſtance of her thus *making* incapacity, is a thing that Mr. *Nye* in his *Beams of former Light* reflects on as *ſtrange*: for he *there* in *p.* 201. referring to Queen *Elizabeth's Injunctions*, A. 1559. *Injunct.* 29. viz. **It is thought very neceſſary that no manner of Prieſt or Deacon ſhall hereafter take to his Wife any manner of Woman without the Advice and Allowance firſt had by the Biſhop of the Dioceſe, and two Juſtices of the Peace next to the place of her abode**, &c. **and if any ſhall do otherwiſe, they ſhall not be permitted to Preach the Word, or give Sacraments, nor be Capable of any Eccleſiaſtical Benefice**; ſaith then, *Doth this ſeem ſtrange now? It ſeem'd very neceſſary in the judgment of our Governors then?*

A. I muſt acknowledge that you have ſpoke that which is very much for my Satisfaction concerning the *Diſpenſative* Power and the *Oath* thus ſupporting one another. But I wonder that I have not in any of our celebrated *Writers* of the *Church* of *England* read that the *Contents* of the *Aſſertory* and *Promiſſory* parts of this *Oath*, and our *abjuring* **foreign** *Juriſdictions*, **Powers, Superiorities and Authorities** in the *Oath*, i. e. thoſe of the *Papacy*, were intended in order to the ſtatuminating our Prince's *Diſpenſative* Power purſuant to the *Statutes* of 25. *H.* 8th, and 1° *Eliz.* beforemention'd.

B. I can eaſily direct you to ſuch a *Writer* of our Church who hath done the thing to the univerſal Satisfaction of the Inquiſitive as to this Point, and that is the Lord Primate *Bramhal* in his *Book* of *Schiſm Guarded*.

He ſaith there, in *p.* 330, and 331. *As our Grievances, ſo our Reformation was only of the abuſes of the Roman Court. Their beſtowing of Prelacies and Dignities in* England *to the Prejudice of the right Patrons; Their Convocating Synods in* England *without the King's leave; Their Prohibiting Engliſh Prelates to make their old feudal Oaths to the King, and obliging them to take new Oaths of Fidelity to the Pope; Their impoſing and receiving Tenths and firſt Fruits, and other Arbitrary Penſions upon the Engliſh Clergy*; **and laſtly, their Uſurping a Legiſlative Judiciary and Diſpenſative Power in the exterior Court by Political Coaction**; *theſe are all the branches of Papal Power which we have rejected. This Reformation is all the Separation that we have made in point of Diſcipline. And for Doctrine we have no difference with them about the old Eſſentials of Chriſtian Religion: and their new Eſſentials which they have patch'd to the Creed are but their erroneous, or at the beſt, probable Opinions; no Articles of Faith.* Thus then according to theſe meaſures, you ſee how much the *hinge* of the *Reformation* turns on the *Uſurpation* of the *Papacy* in *Diſpenſing*: for in all theſe particulars enumerated, the Pope *diſpens'd* with the King's *Laws*. And he had before in *p.* 26. ſaid, *This Primacy neither the Ancients nor we deny to St.* Peter, *of Order, of Place, of Preheminence. If this firſt moverſhip would ſerve his turn, the Controverſie were at an end for our parts. But this Primacy is over-lean; the Court of* Rome *have no* guſto *to it. They thirſt after a viſible Monarchy on Earth, an abſo-*

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ſolute Eccleſiaſtical Soveraignty; **a Power to make Canons, to aboliſh Canons, to diſpenſe with Canons:** *to impoſe Penſions, to diſpoſe of Dignities, to decide Controverſies by a ſingle Authority. This was that which made the breach; not the Innocent Primacy of St.* Peter. And afterward in *p.* 149. he ſaith, **But I muſt contract my Diſcourſe to thoſe Diſpenſations that are intended in the Laws of** Henry **the** 8th, **that is the Power to diſpenſe with Engliſh Laws in the exterior Court: Let him bind or looſe inwardly whom he will: whether his Key erre or not, we are not concern'd. Secondly, As he is a Prince in his own Territories, he that hath Power to bind, hath Power to looſe. He that hath Power to make Laws hath Power to diſpenſe with his own Laws. Laws are made of Common Events. Thoſe benign Circumſtances that happen rarely, are left to the Diſpenſative Grace of the Prince. Thirdly, As he is a Biſhop, whatever Diſpenſative Power the ancient Eccleſiaſtical Canons, or Edicts of Chriſtian Emperors give to the Biſhop of** Rome **within thoſe Territories that were ſubject to his Juriſdiction by Humane right, we do not envy him: ſo he ſuffer us to enjoy our ancient Privileges and Immunities freed from his Encroachments and Uſurpations.** *The Chief ground of the ancient Eccleſiaſtical Canon was, let the old Cuſtoms prevail. A poſſeſſion or Preſcription of Eleven hundred years is a good ward both in Law and Conſcience againſt an Human Right, and much more againſt a New pretence of Divine Right.* **For Eleven hundred years our Kings and Biſhops enjoy'd the ſole Diſpenſative Power with all Engliſh Laws, Civil and Eccleſiaſtical. In all which time he is not able to give one inſtance of a Papal Diſpenſation in** England, **nor any ſhadow of it when the Church was formed. Where the Biſhops of** Rome **had no Legiſlative Power, no Judiciary Power in the exteriour Court, by neceſſary Conſequence they could have no Diſpenſative Power.** He then in *p.* 169. mentions the ſaid **Statute** of 25. H. 8th. and having referr'd to the *Proviſo*, there to ſhew, that *its intent was not to vary from the Church of Chriſt in any other things declared by the Holy Scripture, and the Word of God neceſſary to Salvation*, he ſaith *then followeth the ſcope of our Reformation; only to make an Ordinance by Policies neceſſary and convenient to repreſs Vice, and for good Conſervation of the Realm in Peace, Unity and Tranquillity from ravine, and ſpoil, enſuing much the ancient Cuſtoms of this Realm in that behalf: not minding to ſeek for any relief, ſuccours, or remedies for any worldly things, and Humane Laws in any cauſe of neceſſity, but within this Realm at the hands of your Highneſs, your Heirs and Succeſſors Kings of this Realm, which have and ought to have an Imperial Power and Authority in the ſame, and not obliged in worldly Cauſes to any other Superior.*

Thus then you ſee this *Prelates* ſenſe of how much the taking away the Pope's *Diſpenſative* Power here, and *reſtoring* that Power to the *Crown*, was the *Soul* of the *Reformation*, and *tota* in *toto* of it. And this *Act* you ſee revived by the *Firſt* of *Elizabeth* without garbling it in the leaſt; and the *Diſpenſative* Power thereby reſtored to her, her Heirs and Succeſſors, and a *Declaration*, **that no Subjects of the Realm need for any worldly things and Humane Laws in any Cauſe of Neceſſity ſeek for any relief, but within this Realm at the hands of our Soveraign,** as aforeſaid. And I ſhall tell you that the *Biſhop* in the next *Page* refers to the *Statute* of the *Firſt* of *Eliz.* and ſaith on his *view* of both *Statutes*, *Whatſoever Power our Laws did deveſt the Pope of, they inveſted the King with it.* And of this, the Power of *Rehabilitating* any of his *Lay* or *Clerical* Subjects is a part, as was beforeſaid.

A. You have cited somewhat out of this Great *Champion* for the *King*'s Supremacy, and for the *Church* of *England*, and reputed to be the most clear *Vindicator* of it from *Schism* our Church hath had, which hath created more anxiety in my mind about the *Assertory* part of the *Oath* then any thing hath done. For the words in the *Oath* are, **I do utterly testify and declare**, &c. **that no Foreign Prelate or Person hath or ought to have any Jurisdiction, Power Ecclesiastical or Spiritual within this Realm**, and you have brought in the *Primate* granting that the *Pope* hath *Power* here to *bind* or *loose* inwardly, and asserting that he hath here a *Spiritual* Power.

B. You judge right of the *Bishop*'s Opinion, and which is indeed expres'd throughout his whole Book. He tells us in *p.* 25. *That St.* Cyprian *made all the Bishopricks in the World to be but one Masse, whereof every Bishop had an entire part*: And he saith in *p.* 60, and 61. *That neither King* Harry *the* 8th, *nor any of our Legislators did ever endeavour to deprive the Bishop of* Rome *of the Power of the Keys, or any part thereof; either the Key of Order, or the Key of Jurisdiction: I mean Jurisdiction purely Spiritual which hath place only in the inner Court of Conscience, and over such Persons as submit willingly*: And in the clearing of which Point he refers to the *Proviso* aforesaid in the *Statute* of the 25*th* of *Harry* the 8*th*, and the 37*th* **Canon** of the **Church** of **England**, as rendring the *Power* by *both* given to the King to be purely *Political*. But in *p.* 159. he refers by way of *Objection* to two *Statutes* of *Harry* the 8th, the one an **Act for extinguishing the Authority of the Bishop of** Rome, the other **an Act for Establishing the Succession**, wherein there is an *Oath*, **that the Bishop of** Rome **OUGHT not to have any Jurisdiction or Authority in this Realm**; then saith it is declared in the 37th *Article* of our Church, **that the Bishop of Rome hath no Jurisdiction in the Kingdom of** England: and in the **Oath** ordain'd by **Queen** Elizabeth, **that no Foreign Prelate hath or ought to have any Jurisdiction or Authority Ecclesiastical or Spiritual within this Realm**: and he then by way of answer to which, says *That those two Statutes were long ago repeal'd by Queen* Mary, *and never afterward restored*, &c. *and that altho it were supposed that our Ancestors had over-reach'd themselves and the truth in some Expressions, yet that concerns not us at all, so long as we keep our selves exactly to the line and level of Apostolical Tradition*: and saith, that *our Ancestors meant the very same thing that we do. Our only difference is in the use of the words*, **Spiritual Authority or Jurisdiction**, *which we understand of Jurisdiction purely Spiritual which extends no further then the Court of Conscience. But by* **Spiritual Authority or Jurisdiction**, *they did understand Ecclesiastical Jurisdiction in the exterior Court, which in truth is partly Spiritual, partly Political.* And he in *p.* 161. takes notice of the *Apostles* **Dispensative** *Power*, 2 Cor. 2. 10. **to whom I forgave any thing for your sakes, forgave I in the person of Christ**? *But all this is only in the interior Court of Conscience.*

But the *Primate* having in *p.* 72. discours'd of the *Act* of 1° *Eliz.* c. 1. saith, *here is no new Power created in the Crown, but only an ancient Jurisdiction restored; here is no foreign Power abolish'd, but only that which is repugnant to the ancient Laws of* England, *and the Prerogative Royal. In a word, here is no Power ascribed to our Kings, but merely Political and Coactive to see that all their Subjects do their Duties in their several Places. Coactive Power is one of the Keys of the Kingdom of this World; it is none of the Keys of the Kingdom of Heaven. This might have been expres'd in words less subject to Exception.*

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A. The *Primate* hath ſhewn an eminent *Candour* of mind in theſe *Paſſages* of his you have cited: and *if our Anceſtors had but over-reach'd themſelves, and the truth in ſome Expreſſions*, and in any part of a *Statute* but that which *forms* an *Oath*, it had not *much concern'd us, and as long as they had kept exactly to the line and level of* plain Truth in *all* the words of the *Oath*: but *Oaths* being *ſtricti juris*, and being to be taken *in truth and in righteouſneſs*, and in the common *ſenſe* of the words, may I not here to the *Aſſertory* Clauſe of **No foreign Prelate or Perſon hath or ought to have any Juriſdiction**, &c. apply thoſe other words of the Primate, *This might have been expreſs'd in words leſs ſubject to Exception?* But according to what he *cited* out of St. *Cyprian*, it may be ſaid inſtead of *no foreign Prelate hath or ought to have any Juriſdiction*, &c. that *Every foreign Prelate hath it*, and not only the *Biſhop* of *Rome* as claiming a Succeſſion under St. *Peter*, but Thouſands of other Biſhops in Chriſtendom; who, as the *Primate* ſaith there, *p.* 162. *do not at all derive their Holy Orders from S.* Peter, *or any other Roman Biſhop, either mediately, or immediately* (*eſpecially in* Aſia *and* Africa) *but from the other Apoſtles.*

And ſuitably to what the *Primate* obſerv'd out of *S. Cyprian*, by which we ſee that as *there is but one Univerſal Church*, *ſo there is but* Epiſcopatus Unus *in that Church* and that *undivided*, I find it obſerv'd in Sir *Geffery Palmer's Reports* in *the Caſe of* **Evans & Kiffin. verſ. Aſcuith.** Trin. 3. Car. *B. R. Whitelock. Eveſque ad* 3 *Powers. Le Primer eſt Ordinationis: and that comes to him by his Conſecration, and not before. By that he can take the reſignation of a Church. He can give Orders and Conſecrate Churches: and it belongs not to him as he is a Biſhop of one place or other*, mais il eſt univerſel ſur tout le monde. *And therefore the Archbiſhop of* Spalato *when he was here could give Orders. The Chief Juſtice agreed with him herein. The ſecond is* Poteſtas Juriſdictionis *which is not Univerſal, but tied to certain places, as to take an Oath, to Excommunicate and Puniſh offences, and this Power he hath by Confirmation. The third is* Adminiſtratio rei Familiaris, *the Government of his Revenue, and this is gain'd by Confirmation.* By this you ſee that the Biſhop of *Rome*, as every other *foreign* Biſhop, may have ſome *Spiritual* Power here, *viz.* what the *Reporter* menti n'd as the firſt. And therefore I could wiſh that the 37th of our 39 *Articles* to which the *Primate* refers for the *Interpretations* of this *Clauſe* in the *Oath*, had in thoſe words there **the Biſhop of** Rome **hath no Juriſdiction in this Realm**, expreſs'd ſuch a *diſtinction* of his *Juriſdiction* as the *Biſhop* hath done: and otherwiſe that common and trite Rule of *Non eſt diſtinguendum ubi lex non diſtinguit*, being here applicable, you know what is to be thought of an *ambiguous* Oath; and that as the ſagacious Author of *the Hiſtory of the Council of* Trent hath told us, *p.* 187, *as one Particular makes falſe the contradictory Univerſal, ſo one ambiguous Particular, makes the Univerſal to be ambiguous.*

Moreover tho you will ſuppoſe that he might lawfully take the *Oath* in his *ſenſe* of the Pope's Juriſdiction, yet all his great Learning and Reaſon could not qualifie him to be an *Authentical* Interpreter of the *Oath* to me. In ſome parts of the *Oath* that were obvious to *doubt*, you have already given me ſatisfaction, and particularly in making me by vertue of the *Canons* of King *James* a *participant* with the *Clergy* in his authentical *Interpretation* of the 37th *Article*. And ſince as *Suarez* in his learned Book, *De Legibus*, 4. c. *de Interpretatione humanarum Legum*, ſaith that *there may be an interpretation of Law which hath the Authority of Law*, and that *qui in eadem poteſtate ſuccedit, ſemper poteſt Prædeceſſorum leges interpretari*, I ſhall account King *James* his *Interpretation* as good as Queen *Elizabeth's*:

and

and that if he had there declared his mind about the Pope's *ſpiritual* Power *in foro interno*, being not *renounced* by this *Clauſe* in the *Oath*, I ſhould then be content with it. But 'tis otherwiſe: for he there Confirms it in effect as 'tis in the *Article*.

Now you know how much *Simplicity* becomes an *Oath*, and how requiſite it is that it ſhould be conceiv'd in plain and *liquid* terms, and taken in the Impoſer's ſenſe and without *mental* reſervations, and that you ſhould Swear therein to no *dogmatical* Aſſertion; and as to which Mr. *Nye* ſaith well in his *Obſervations on that Oath, to ſwear poſitively to any dogmatical Aſſertion is not required. It would be a taking the Name of God in vain: for if it be a certain and undoubted truth in it ſelf and to others, as are Principles of Reaſon and Articles of Faith, an Oath is vain, for it ends no ſtrife. If doubtful and a queſtion whether true or not, tho ſuch an Oath puts it out of queſtion that I believe ſo, yet not that it is a truth. My belief, tho never ſo much evidenced and confirm'd, doth not make a doubtful matter in it ſelf more credible; nor is one man's believing an Aſſertion juſt ground for another man to believe the ſame. Such an Oath therefore is in vain, and not a fit* Medium *to end ſuch a Controverſy.*

Now how far your *declaring* in your *Oath* that *no foreign Prelate hath nor ought to have any Juriſdiction Spiritual within this Realm*, and the Interpretation of it *purſuant* to the 37th *Article* delivering the Plain words, **The Biſhop of** Rome **hath no Juriſdiction**, &c. may bring you within the *Verge* of *ſwearing* what is *dogmatical*, I leave you to judge: but ſhall take the liberty to tell you, that when I ſee ſome of our *Laws*, and particularly this about our **Oath** *girdled* with ſo many *Interpretations* like new *tender-ſided* Ships, I ſhall be apt to take little pleaſure in embarquing my Conſcience in ſuch an *Oath*, and am apt to call to mind the *Cenſure* which Mr. *Milton*'s *Character of the Long Parliament of* 40. fulminates againſt his Countrymen, and by which he ſo much diſables our underſtandings as to Political Government; and ſaith, *that the Sun which we want, ripens Wits as well as Fruits, and as Wine and Oyl are imported to us from abroad, ſo muſt ripe underſtanding*, &c.

B. But however, tho our *Wine* and *Oyl* are imported to us from abroad, our *Diſpenſations* are not, and we have no Occaſion to ſend *Gold* to *Rome* for *Lead*: And I aſſure you, he who ſhall conſider that the Engliſh *Virtuoſi* were the *laſt* that did receive the yokes of the old *Imperial* and later *Papal* Power of *Rome*, and the *firſt* that threw them off, will tho we are *Craſſo ſub cœlo nati*, have no cauſe to vilifie our underſtandings, but rather to envy their triumphs over Infallibility ſo call'd. And perhaps when I ſhall have told you of another paſſage of the *Biſhop*, p. 59. in his *Schiſm guarded*, you will think the Eyes of our Anceſtors underſtandings did look out ſharp when the two *Statutes* of the 25*th* of *H.* 8. and 1° *Eliz.* were made; and there he ſaith, *Suppoſe any of our Reformers have run into any Exceſſes or Extremes, either in their Expreſſions, or perhaps in their Actions (it is a difficult thing in great changes to obſerve a juſt mean) it may be out of Humane Frailty, as* Lycurgus *out of hatred to Drunkenneſs cut down all the Vines about* Sparta, *or it may be out of Policy, as men uſe to bend a Crooked rod as much the contrary way, or as expert Maſters of Muſick do ſometimes draw up their Scholars a Note too high, to bring them to a juſt tone, what is that to us as long as we practice the Mean and maintain the Mean, and guide our ſelves by the certain line and level of Apoſtolical and Primitive Tradition?*

There is no doubt but in the *framing* of the *Statute* of 1° *Eliz.* and the *Oath* therein, regard was had to the *Oath* in the 35*th* of *H.* 8. c. 1. viz.

I having now the veil of Darkneſs of the Uſurped Power, Authority and Juriſdiction of the See and Biſhops of Rome clearly taken away from mine Eyes, do utterly teſtify and declare in my Conſcience, that neither the See nor the Biſhop of Rome, nor any foreign Potentate hath nor ought to have any Juriſdiction, Power or Authority within this Realm, neither by God's Law, nor any other juſt Law or means, &c. and that I ſhall never conſent nor agree that the aforeſaid See or Biſhop of Rome, or their Succeſſors, ſhall exerciſe or have any manner of Authority, Juriſdiction or Power within this Realm, &c. And this Oath remain'd the ſame all the reſt of his Reign, and all *Edward* the 6*th*'s time: and as to which Queen *Elizabeth* changed the Expreſſion of *Supreme Head*: and both *Harry* the 8th, and *She* having their Eyes on the effect of *Papal* Excommunications, and concern'd to have the *nullity* of them believed by their Subjects, might ſeem according to the *Primate*'s Expreſſion *to bend the crooked rod of the* Papal *Juriſdiction overmuch the contrary way in their Oaths*, that ſo it might come to that juſt ſtraitneſs refer'd to according to the *Primate*'s meaſures of it.

But after all I ſhall tell you, that I think no *Political* reſpects can juſtifie the putting *doubtful* Expreſſions into an *Oath*, or the *taking* of one with *mental* reſervations of a *ſenſe* different from the *Common* one of the words, and I do therefore joyn *iſſue* with you in the Point, that the *Clauſe* in the *Oath*, That no foreign Prelate hath or ought to have any Juriſdiction, &c. being the very *ſame* in the 37th Article, (and in the *Interpretation* of which *Article*, King *James* his *Canons* have, as you ſaid, made you a *ſharer* with the *Clergy*) you and all others who *take* the *Oath* may be thankful for the *benefit* of that *King*, having *further* exerciſed the *Diſpenſative* Power of his *interpreting* the whole intent of that *Oath*: And that *Interpretation* of it which hath made the *Coaſt* of the Oath *clear* to you in this Point, you will find agreeing to what he hath in our Language *Publiſh'd* to the World, and dedicated to eternity. For he having in his *Premonition to all Chriſtian Monarchs* mention'd how *he cauſ'd the Houſe of Commons to Reform a Clauſe they had put into the Oath of Allegiance derogatory to the Pope's ſpiritual Power*, viz. *That the Pope had no Power to Excommunicate him, and that he was ready to conſent that the Biſhop of* Rome *ſhould have the firſt Seat, and be Patriarch of the Weſt*, *and be* Primus Epiſcopus inter omnes Epiſcopos & princeps Epiſcoporum, *ſo it be no otherwiſe but as* Peter *was*, *Princeps Apoſtolorum*, takes occaſion in his *Apology* for the *Oath* of *Allegiance* to let the *World* know his *Royal* judgment of the *intent* of the *OATH* of *SUPREMACY*; and there in *Confutation* of the Pope's *Breves*, and *Bellarmine*'s Letter, he ſaith in *p.* 108. that *the rendring Chriſtian Kings within their own Dominions, Governors of their Church as well as of the reſt of their People, in being* Cuſtodes utriuſque tabulæ, *not by making new Articles of Faith*, &c. *but by commanding Obedience to be given to the Word of God, by reforming Religion according to his preſcribed Will, by aſſiſting the Spiritual Power with the Temporal Sword, by reforming Corruptions, by procuring due Obedience to the Church, by judging and cutting off all frivolous Queſtions and Schiſms as* Conſtantine *did, and finally by making* decorum *to be obſerv'd in every thing, and eſtabliſhing Orders to be obſerv'd in all indifferent things for that purpoſe, is the ONLY* intent of the Oath of Supremacy: and whereby as he effectually *confuted* the *Cardinal*, whoſe *Letter* charged the *Oath* of *Supremacy* as tending to this end, *That the Authority of the Head of the Church in* England *may be transferr'd from the Succeſſor of St.* Peter *to the Succeſſor of King* Henry *the* 8*th*, *and to oppoſe the Primacy of the Apoſtolick See*; ſo at the *end* of his *Book* he ſhews that

his *deſign* of *Publiſhing* the ſame, was *to ſatisfie all his good and natural Subjects, and likewiſe Strangers, about the things therein contain'd*; and whereby the King's *Mind* was publickly *notify'd* that in the *right* done to the *Crown* by the *Oath* of *Supremacy* as well as of *Allegiance*, there was no *wrong* intended to St. *Peter*, or his Succeſſors.

A. I hope you have now put a *Period* to the *Hiſtory* of the *Diſpenſative* Power of the Crown, that was exerciſed in the *interpreting* of any *parts* of the *Oath* of *Supremacy*, or the 37th *Article* thereto relating. You have named to me ſo many *interpretations* of the *Oath*, that according to the wiſdom of our State, and the *Lex & Conſuetudo Parliamenti* making a *Bill* to be thrice read in each *Houſe* of *Parliament*, and then receiving the *Royal* Aſſent to be thought like *Gold* ſeven times purify'd, may ſhew the *interpretation* of the *Law* to be ſo too. But tho I will account any good Law to be more precious then Gold, yet if like *Gold* it be too far extended by *ductile* interpretation, it may be drawn to ſuch a thinneſs as to loſe all its weight and eſtimation, and retain only a poor tincture and colour that will ſignifie little or nothing. And as *Pliny* in his *Panegyrick* on *Trajan* ſaid, that by reaſon of the *multitudes* of ſutes upon *Penal* Laws in *Rome*, there was danger till *Trajan's* time, *ne Civitas fundata legibus, legibus everteretur*; ſo a Law whoſe Obligatorineſs is founded on *interpretations* may be endanger'd by the multitudes of them to be deſtroy'd, and may like the *Papal* Laws of New *Rome* by the infinite interpretations of *Caſuiſts* in the *forum internum* (which is their *Tribunal*) be brought to ſignifie nothing in either *forum*, and to be only an Engine to make Perplexities.

You have given me here ſuch a *Genealogy* of *interpretations*, that according to the common *Story* of *Ariſe Daughter*, &c. one may ſay, *Ariſe Interpretation, and go to thy Interpretation*, &c. I ſhall therefore be glad now you have been ſo largely communicative of your thoughts to me about the *aſſertory* part of the *Oath*, you will deal as *frankly* with me in acquainting me with what may in the *Promiſſory* part of the *Oath* be of importance for me to know in order to the better diſcharge of my Duty in the *Caſe* before me.

B. I ſhall therein be moſt ready to ſerve you when we meet next: for the entire Conſideration of what according to the *Aſſertory* part of the *Oath* you are obliged to do, will I ſee, be as great a load as both our patiences will at this time bear; and therefore according to the Saying of *Muſt is for the King*, I am to tell you, that let our Kings make never ſo many *interpretations* one after another of this your *Oath*, you *muſt* (finding them all Conſiſtent with one another) conſider them all with all due regard and thank God and them when their Conſciences being inclined to a tenderneſs for the doubting of yours, they interpoſe their Diſpenſative Power of that kind. And hereupon I ſhall tell you that in the *year* 1628. King *Charles* the Firſt did cauſe the 39 *Articles* to be reprinted, and with a *Declaration* before the ſame made by him as *Supreme Governor of the Church within his Dominions*, that thoſe *Articles* contain the true *Doctrine* of the *Church* of *England*, and that *if any Difference ſhould ariſe about the external Policy concerning Injunctions, Canons or other Conſtitutions whatſoever belonging to the Church of* England, *the Clergy in their Convocation, is to order and ſettle them*, &c. *he approving their ſaid Ordinances*, &c. *that the Biſhops and Clergy ſhall have licence under the Broad Seal to deliberate of, and do all ſuch things as being made plain by them and aſſented to him, ſhall concern the ſetled Continuance of the Doctrine and Diſcipline of the Church of* England, &c. and then having reſpect to the *Article* wherein the *Arminians* and *Antiarminians* were concern'd, 'tis order'd,

that

that *no man hereafter ſhall either Print or Preach to draw the Article aſide any way*, &c. But the *firſt* Canon that was afterward (*viz.* A. 1640.) made, was that *concerning the Regal Power*, which begins with *taking notice* that ſundry Laws, Ordinances, and Conſtitutions had been formerly made for the acknowledgment and profeſſion of the moſt lawful and independent Authority of our Dread Sovereign Lord the King over the ſtate Eccleſiaſtical and Civil, and then enjoyns them to be ALL carefully obſerv'd by all perſons whom they Concern upon the Penalties in the ſaid Laws and Conſtitutions expreſs'd, and then *decrees*, that the Clergy ſhall read the following Explanation of the Regal Power: and where the words, A Supreme Power is given to this moſt excellent Order (*i.e.* of Kings) by God himſelf in the Scriptures, which is, that Kings ſhould rule and Command in their ſeveral Dominions all perſons of what Rank or Eſtate ſoever, whether Eccleſiaſtical or Civil, and that they ſhould reſtrain and puniſh with the Temporal Sword all ſtubborn and wicked doers, ſhew they had then the 37th of the 39 Articles in their *eye*: and ſome *other* words, *viz.* for any perſon or perſons to ſet up, maintain or avow reſpectively under any pretence whatſoever, any independent Coactive Power, either papal, or popular, &c. is to undermine their great Royal Office, ſhew they had an *Eye* on that 37th *Article*, and on your *Oath*, and where they did ſpeak out that *ſenſe* of the *Clauſe*, The Biſhop of Rome hath no Juriſdiction, &c. and of the *words* in the *Oath*, that no foreign Prelate hath or ought to have any Juriſdiction, &c. *that is*, that the *Biſhop* of *Rome* had here no *independent* Coactive *Juriſdiction*, the *ſenſe* in which all conſiderate Perſons who were Members of the *Church* of *Rome* in *Harry* the 8th's time, and of the *Church* of *England* in *Edward* the 6th's time, *took* the *old* Oath of Supremacy, and the *Members* of the Church of *England* in Queen *Elizabeth's* time and ever ſince *took* the *new* one.

As for *Non-conformiſts*, who think the *Government* of *Biſhops* unlawful, this *Clauſe*, that no foreign *Biſhop* hath or *ought* to *have* any *Juriſdiction* in the *forum internum* wanted no relief in their Caſe from the *Diſpenſative* Power of *interpretation*.

Nor did thoſe of the *Church* of *England* who convers'd with the *Statute-Book* want the Crown's *interpretation* of this *Clauſe* in the *Oath*; for the ſcope of the *Statute* of the 35th of *H.* the 8*th*, that enjoyn'd the *old* Oath of *Supremacy* (and from whence this *Clauſe* in the *New* one had its *riſe*) was not to break the Meaſures of St. *Cyprian* about the *Unity* of *Epiſcopal* Power, but in effect to repreſs the *Uſurp'd* independent *Coactive* Power of the *Biſhop* of *Rome*, and which ſeveral of the following words in that *Oath* ſufficiently evince, and which did bind the *Swearer* to defend and maintain all other Acts and Statutes made or to be made within this Realm for the Extirpation and Extinguiſhment of the uſurped and pretended Authority, Power and Juriſdiction of the See and Biſhop of Rome, &c. And Queen *Elizabeth* finding the *Oath* thus, at her coming to the Throne, ſhe like a *wiſe* Reformer, would not make any *breach* in the World *wider* then neceſſity required; and probably ſuppoſing that mens *Allegiance* having been uſed to the yoke of ſeveral words in *that* Oath that related to the *renouncing* and *forſaking* of *foreign Juriſdiction*, would draw more quietly in the ſame, and that according to the *Rule* of *quod neceſſario ſubintelligitur non deeſt*, there being no *ſolutio continui* imagin'd by any to be deſign'd in the *Unity* of the *Epiſcopal* Power, when the *Clauſe* of utterly teſtifying and declaring, that neither the See nor Biſhop of Rome hath nor ought to have any Juriſdiction, Power or Authority within this Realm.

Realm, &c. was inſerted in the *old* Oath, it ought to be judged that nothing derogatory to the *order* of *Biſhops* could be *intended* in the *Clauſe* of the *new* Oath by her introduced. And according to the *Rule* of *Analogum per ſe poſitum*, &c. Juriſdiction being to be taken for *Coactive* Juriſdiction, the *Clauſe* relating to any *foreign* Prelates having here no Juriſdiction hath been ſtill meant of *none Coactive*. Mr. *Rogers* therefore writing on the 39 *Articles*, hath thus fairly *commented* on that *Clauſe* in the 37th, The Pope hath no Juriſdiction, &c. *His Juriſdiction hath been and is juſtly renounced and baniſh'd out of* England *by many Kings and Parliaments, as by King* Edward *1ſt, 3d, and 6th*: *by King* Richard *the 2d*, Harry *the 4th, 6th, 8th, and by Queen* Elizabeth, *and by our moſt noble King* James.

But that the *Church* of *England* intended no War againſt the *Unity* of *Epiſcopacy* by the *Canons* of 1640. (which yet have the *words* of *Popery's being a groſs kind of Superſtition*, and of the *Maſs being Idolatry*, and do inſlict a temporary *diſability*, namely that of *Excommunication* on Popiſh Recuſants) may appear by the *tenderneſs* there uſed to the *Church* of *Rome* in ſparing to impute the Superſtition of *Popery* to that whole *Church* by *name*. And the 6th *Canon*, having mention'd the *Convocation's being deſirous to declare their ſincerity and conſtancy in the profeſſion of the Doctrine and Diſcipline Eſtabliſh'd in the Church of* England (i. e. the *Doctrine* of the 39 *Articles*) *and to ſecure all men againſt any ſuſpicion of revolt to Popery, or any other Superſtition*, and enjoyn'd a *new* Oath againſt all *innovation* of *Doctrine or Diſcipline* to be taken by the *Clergy* (the *aſſertory* part whereof hath in it an *Approbation* of the *Doctrine* and Diſcipline or Government eſtabliſhed in the *Church* of *England*, as *containing all things neceſſary for Salvation*, and the *Promiſſory* part, a *Promiſe not to endeavour to bring in any Popiſh Doctrine contrary to that which is ſo eſtabliſh'd*, &c. *and not to give conſent ever to ſubject it to the Uſurpations and Superſtitions of the See of* Rome) Mr. *Bagſhaw* in his *Argument* in Parliament concerning thoſe *Canons*, took occaſion to *criticiſe* on the not ſubjecting our Church to the Uſurpation and Superſtitions of the See of Rome, and to call it *a Negative Pregnant*; that is to ſay (as his words are) *you may not ſubject the Church of* England *to the See of* Rome, *but to the Church of* Rome *you may. Now there is as much difference between the See of* Rome *and the Church of* Rome, *as betwixt Treaſon and Treſpaſs, and this appears plainly by the Statute of* 23. Eliz. c. 1. *where it is ſaid, that to be reconciled to the See of* Rome *is Treaſon: but to be reconciled to the Church of* Rome *is not Treaſon; for then every Papiſt would be a Traytor, being a Member of the Church, and therefore reconciled to it. Now the See of* Rome *is nothing elſe but the Papacy or Supremacy of the Pope, whereby by virtue of the Canon*, unam Sanctam, *made by Pope* Boniface *the 8th, he challengeth a Superiority of Juriſdiction and Correction over all Kings and Princes upon Earth: and thoſe Perſons which take the* juramentum fidei *contain'd in the end of the Council of* Trent, *which acknowledgeth this Supremacy, are ſaid to be reconciled to this See. The Church of* Rome *is nothing elſe but a number of Men within the Pope's Dominions and elſewhere profeſſing the Religion of Popery: and that the Clergy had an ill meaning in leaving this Clauſe in the Oath thus looſe, I have ſome reaſon to imagine when I find it in their late Books, that they ſay the Church of* Rome *is a true Church, and Salvation is to be had in it.*

And if it were *tanti* after having ſaid ſo much, to ſay yet any thing more to prop up the ſafety of your taking the *Oath* of *Supremacy* with the *Clauſe* whoſe *ſenſe* hath been propp'd up by ſo many Acts of the *Diſpenſative* Power of *interpreting*, I could tell you that in Sir *John Winter's Obſerva-*

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tions on the Oath of Supremacy, Printed *A.* 1679. he having there conſider'd Queen *Elizabeths interpretation in the Admonition*, and the *Confirmation of that Admonition by her Majeſty in Parliament* by the *Proviſo* in the *Statute* of 5° *Eliz.* c. 1. and the whole *drift* of the *Statute* 1° *Eliz.* by which the *Oath* was enacted, and what Biſhop *Carleton* and the Primate *Bramhal* writ of the *ancient* Juriſdiction *reſtored* to the *Crown* by that *Statute*, and that on the whole Matter the *deſign* of the *Oath* was not to inveſt her with the exerciſe of the *ſpiritual* Juriſdiction left by *Chriſt* to his *Apoſtles* and their *Succeſſors*, but to leave that entire to them, ſaith at the end of his *Book*, that *it is not the true meaning of the Oath explain'd in manner as aboveſaid, which makes many of the Roman-Catholicks refuſe to take it*, &c. and then makes the *Explanations not being known to all, and their intricacy, and the conſtant tendring of the Oath for ſo many years without the aforeſaid Explanation, likely to give juſt Cauſe of Scandal*, and thereupon *he wiſhes that that Oath, and the other of Allegiance which are required of them under ſo great Penalties, may be clear'd of thoſe doubtful Expreſſions in them which cauſe their ſcruples*, &c. *whereby they may to the entire Satisfaction of His Majeſty and the Nation, fully teſtifie the Allegiance and Fidelity of faithful Subjects and true Patriots, and no longer remain as they generally now do diſtruſted*, &c. But there was another *Book* that *year Publiſh'd* by a Roman Catholick, of which the *title* was *A ſeaſonable Diſcourſe ſhewing how that the Oaths of Allegiance and Supremacy (as our Laws interpret them) contain nothing which any good Chriſtian ought to boggle at*, and where the Saying of *Tertullian* is quoted, *Bonæ res neminem ſcandalizant, niſi malam mentem*, &c. and where having taken notice of the Queen's *Admonition*, and the *Proviſo* of the *Statute* of 5° *Eliz.* and the 37th *Article*, and the *Judgments* of the Biſhops, *Bramhal* and *Carleton*, as Sir *John Winter* had done (and for the ſame purpoſe) giveth his Judgment that *the taking of thoſe Oaths gives no Scandal*: and he in *p.* 38. averrs, that *Sir* John Winter *told him many years ago that he had the Judgment of Sorboniſts, Secular Prieſts, and Jeſuites, that he might take the Oath of Supremacy, declaring the ſenſe which the Law allows.* And I ſhall here by the way take notice that as to the *Oath* of *Allegiance*, *F. Creſſy* ſaith in his *Epiſtle Apologetical*, p. 111. *that few Roman Catholicks (if any at all) would refuſe that Oath if that unlucky word* heretical *were blotted out*, &c. *or if they might change heretical into, contrary to the Word of God, which* (he ſaith) *he verily believes was the ſenſe intended by King* James.

But now after all this ſaid, I ſhall tell you that according to what is *obſerv'd* by the generality of *Writers*, of *Princes* eaſing their Subjects by their *Diſpenſative* Power of *interpreting* their Laws, *viz.* That they take occaſion then to *intermix* with ſuch *interpretation* ſomewhat elſe that may *advance* their Power; there were *Fears* and *Jealouſies* that ſome of theſe *forementiond* interpretations, tho leſſening the *ſpiritual* Power of the Crown might enlarge its *temporal*, and particularly ſuch as in the *Queen's Admonition* mention'd **the Duty, Allegiance and Bond acknowledg'd to be due to** Harry **the Eighth**, and Edward **the Sixth**: and (as I partly before hinted) ſuch as in the *Proviſo* in the *Act* of the 5th of the *Queen*, that ratifying the *Admonition* hath in it the additional words of **acknowledging in her Majeſty, her Heirs and Succeſſors the Authority that was challenged and lately uſed by** Harry **the Eighth**, and Edward **the Sixth**, and ſuch as in the 37th *Article* explain'd the **Queen's** Power by **that given by God himſelf to all GODLY Princes in Scripture** (and where notwithſtanding the *Word* **Godly** being put in there to *gild* the *Pill* of the *Abſolute* Power of the *Jewiſh Kings*, and to make it be the more eaſily ſwallow'd, the

real *meaning* was *the Power given to* all *the Jewiſh Kings:* for the *right* of their *Power* depended not on their *Godlineſs)* and ſuch as in the *Canons* of King *James* ipſo facto *Excommunicate all that do not give the King the ſame Authority in Cauſes Eccleſiaſtical, not only that the Godly Kings had among the Jews, but what the Chriſtian Emperors had in the Primitive Church.* And there too notwithſtanding the *word* Chriſtian might be for the like reaſon put in as that of Godly was, and to cauſe the owning of that abſolute *Imperial* Power, which purſuant to the *Lex Regia* was uſed by the *Chriſtian* Emperors as well as their *Heathen* Predeceſſors in puniſhing Heterodoxy *ad libitum*, the meaning of the *Canon* was not to deveſt *Heathen* Emperors of their right of judging about Matters of Religion, and as to which *Grotius* in his *Letter to the States Embaſſador*, having ſaid, *neither would* Paul *have appeal'd to* Nero, *had he judged that no right of Judging in a Caſe of Religion belong'd to him*, addeth, *Wherefore as* Trajan *Civilly honeſt*, Nero *wicked are equal in the Right of Government, ſo Pious* Conſtantine *and Impious* Nero, *are equal in the right of judging, in aptitude and skill unequal.* The Canons therefore of Forty, enjoyning the *Explanation* or *Interpretation of the Regal Power* there inſerted to be one *Sunday* in every *Quarter* of the *Year* read by the *Clergy* to their Flocks, did well provide for the cautioning them as againſt the ſetting up any *independent Coactive Power* either Papal or Popular, ſo againſt *Fears and Jealouſies* relating to their *Properties* in their *Goods* and *Eſtates:* and by that *Explanation* they ſhew that **Chriſt came not to Undermine or Diſturb, but to Confirm the Civil Government of Pagan Princes, and that in the firſt times of Chriſt's Church, Chriſtians were ready to ſubmit their very Lives to the very Laws and Commands of thoſe Princes.**

A. But doth that *Explanation* of the *Regal Power* aſſert any thing in *Defence* of the *Diſpenſative* part of it?

B. You ſee how without *wyre-drawing* any Conſequences, the very firſt *Paragraph* of the *Explanation* doth both ſtrengthen the foundation of the *aſſertory* part of your *Oath*, we have been ſo long diſcuſſing, and ſtrike out new lights in the Fabrick of the *Oath.* You ſee it tells you *downright*, that **A Supreme Power is given to the Order of Kings by God himſelf in the Scriptures, which is that Kings ſhould rule and Command in their ſeveral Dominions, all Perſons of what rank or eſtate ſoever,** &c.

And the *Explanation* doth effectually enough provide by the ſecond *Paragraph* that Kings ſhould take care that none in their Dominions **but the ſtubborn and evil doers may be reſtrain'd with the Temporal Sword:** for it ſaith, **The Care of God's Church is ſo committed to Kings in the Scripture, that they are commended when the Church keeps the right way, and taxed when it runs amiſs: and therefore her Government belongs in chief to Kings. For otherwiſe one man would be Commended for another's Care, and taxed but for another's Negligence, which is not God's way.** And this is an *Argument* taken *ab abſurdo*, and the ſtrongeſt that can be uſed in Law, and not to be ſet aſide but by the *alledging* ſomething as *more* abſurd againſt it; and amounts to this, that it is *abſurd* that *Kings* who are *commended*, when thoſe who are not *ſtubborn* nor *evil doers* are not under any *reſtraint* by the *Temporal Sword* (for *the Church runs* not *the right way*, when that *Sword* is a *terror* to *any* but *evil doers*) and *tax'd* on the *contrary* being done, ſhould not be judged to be authorized to *exempt* thoſe from all *reſtraint* thereby. And when the People are not liable to blame for Kings erring in their Judgment about the Perſons to be ſo exempted from reſtraint, nor to be commended or rewarded for their not erring therein; can any thing be more *abſurd*, then for the

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independent Coactive Power of Kings it ſelf to be *reſtrain'd* to the Puniſhing ſuch as they ſhall judge *Innocent*?

But the two *tendereſt* things in the World are *Sovereign* Power and *Conſcience*, and both of them were made with a *Godly Jealouſie* and *tenderneſs* to *ſupport* one another; and that Tender-Conſcienced *Prince* who *confirm'd* this *Canon*, did in it variouſly *diſpenſare in lege*, as I may properly ſay with *Alluſion* to *Suarez de Legibus*, where in ſtead of uſing the *Common* Expreſſion of *diſpenſing WITH Laws* he ſo frequently mentions *that* of *diſpenſing IN them*, and thereby doth ſeem to take off ſomewhat of the harſhneſs of Queſtions about *Popes* or *Princes diſpenſing WITH Laws*. For when *Sovereigns* do *diſpenſare in lege*, they really *diſtribute* their Sovereign Power throughout the Body of their reſpective Laws for their Preſervation, and as the *heart* doth diſpenſe or *diſtribute* Blood in and throughout the Body-natural, and the Brain *Animal* Spirits throughout the *genus nervoſum* all the Body over. And here the King having a *tender* regard to the *firm* and *infirm* Conſciences of his People reſpectively, and to their various Capacities of underſtanding, and he being as *Zealous* for all their *keeping* their *Oaths* of *Supremacy* and *Allegiance*, as any Prince could be for their *taking* them, doth in the beginning of the *Canon*, let ſuch as you know (who have been brought up to Study, and who have a *tenacious* Memory, and could remember more *interpretations* of the *Oath* then I have recounted to you if they had been given by our Princes) that **whereas ſundry Laws, Ordinances and Conſtitutions have been formerly made for the acknowledgment and profeſſion of the moſt lawful and independent Authority of our Dread Sovereign Lord the King's moſt Excellent Majeſty over the State Eccleſiaſtical and Civil, &c he doth enjoyn them all to be carefully obſerv'd by all ſuch perſons whom they concern upon the Penalties in the ſaid Laws expreſt.**

Here then the **Acts of Parliament** before-mention'd, and the **Oaths**, and **Articles**, and **Canons**, and **Authentick interpretations** appear to look you in the face, and the *Articles* particularly do ſo to the *Clergy* as having ſubſcribed them. But that Pious *Prince* as their *Sovereign* Paſtor, being deſirous that his *Clergy* ſhould *gently* allure the *Layety* with *Line upon Line, and Precept upon Precept* to keep their *Faith* to God, and *Loyalty* to himſelf, rather then by *Interpretation upon Interpretation* of their *Oaths*, would not in this *Canon* have them frighted with the ſight of the *Oaths* themſelves, and which are there not named: and all *Archbiſhops*, *Biſhops*, and inferior *Prieſts* are moreover by the *Canon* required to **Preach, Teach, and Exhort their people to obey, honour, and ſerve their King, and that they preſume not to ſpeak of his Majeſty's Power any other way then in this Canon is expreſs'd**; but which *Canon* gives them a very fair *licence* to *ſpeak* to their People *of* and *for* the *King's* Power of *diſabling* and of *rehabilitating* his Subjects. For it *diſables* the publick Abettors of any *Poſition* contrary to the *Explications* of the *Regal Power* therein, by *Excommunicating* them till they *repent*, and for the *firſt Offence ſuſpends them two years from the Profits of their Benefices, and for the ſecond deprives them of all their ſpiritual Promotions*: and it was in the *Canon* before ſaid, That if **any Parſon, Vicar, Curate or Preacher, ſhall neglect his Duty in Publiſhing the ſaid Explications, &c. he ſhall be ſuſpended by his Ordinary, till ſuch time as upon his Penitence he ſhall give ſufficient aſſurance or Evidence of his amendment, and in caſe he be of any EXEMPT Jurisdiction, he ſhall be cenſureable by his Majeſty's Commiſſioners for Cauſes Eccleſiaſtical.** And the *Canon* makes any Offenders againſt it in the *Univerſities*, as being *exempt* Juriſdictions, there cenſureable

ſureable, or before His Majeſty's *Commiſſioners* for *Eccleſiaſtical* Cauſes; and ſo you have the *Canon* likewiſe by ſecuring the *Rights* of *exempt* Juriſdictions aſſerting the *Diſpenſative* Power.

But if you will take Mr. *Bagſhaw*'s word in his firſt *Argument* in *Parliament* concerning the *Canons*, he there tells you that that very *Canon* of the Convocation containing *the Explanation of the Regal Power*, did neceſſarily imply their declared ſenſe of the Laws being diſpens'd with: For ſaith he, *in making Determinations concerning Royal Power, they have done againſt Law, and have medled with things of which they have no Conuſance: for the Expoſition of them belongs to the Judges of the Land, and they have no more right to expound them, then the Judges have to expound Texts of Scripture.*

And we know that our Laws have been ſo careful of preſerving the Judges right of *interpreting* them, that they allow not the Biſhops and their Officials Power to interpret any Acts of Parliament, tho made about Matters of their Juriſdiction, and Matters merely *Spiritual*: as appears out of *Hobart.* 84. Spenloe's Caſe, and *Coke* 3. *Inſt.* where he ſaith, that an *Act* of *Parliament* made about things merely *Spiritual* ſhall be *conſtrued* by the Common Law of Judges.

But how far the diſabling by the *Power* of *His Majeſty*'s Commiſſioners *for Eccleſiaſtical Cauſes* ſuch who *explain'd* not the *Regal* Power according to that *Canon* might appear as an *Inſtance* of the *Prerogative* of *Diſabling* and of occaſional *re-ennabling*; Mr. *Bagſhaw*'s *ſecond Argument* in effect expoſeth it to Conſideration, by mentioning that *the laſt Letters Patents of the High Commiſſion were* Mich. 9. Car. *in which are contain'd all things, wherein the Commiſſioners were to meddle, and that therefore the Puniſhing of any there on the account of this new Canon made not a year ago, could not be purſuant to thoſe Letters Patents.*

His firſt *Argument* likewiſe wherein he gives his *Judgment*, that by *Law* that *Convocation was diſſolv'd by the Diſſolution of the Parliament*, may let us ſee how far they in making any *Canon* depended on the *Diſpenſative* Power of *Prerogative.*

But any one who hates Faction will find that that *Author* did needleſly inflame the minds of that *Parliament* of *Forty* againſt thoſe *Canons* and particularly with the foremention'd *Exception* againſt the *firſt* on the Account of the *Explanation* of the *Regal* Power having not been made by the *Judges*, and where the Exception doth through the ſides of the Convocation ſtrike at the honour of that King by whom thoſe *Canons* were Confirm'd.

His *Majeſty* in his memorable *Speech* at the *Prorogation* of the *Parliament* on the 20th of *October* 1628. occaſionally ſaid, *I Command all you that are here, to take notice of what I granted you in your Petition* (*i. e.* the Petition of Right) *but eſpecially you my Lords the Judges, for to you only* under me *belongs the interpretation of the Laws: for none of the Houſes of Parliament joynt or ſeparate, have any Power either to make or declare a Law without my Conſent.* Nor will any one wonder at the tenderneſs of any *Crown'd* heads in preſerving their Right, as to the *interpretation* of their *Laws*, who hath conſider'd that the uſage of the ancient *Romans* in making their Civil Law to be among the things *Sacred* and *Ceremonies* of their *Gods* preſerv'd in the *Collegium Pontificum*, and *appropriating* the interpretation of it to their *Pontifices*, did induce *Auguſtus* to be inaugurated *Pontifex Maximus*, and likewiſe all the *Roman* Emperors from *Auguſtus* to *Gratian* to aſſume that title: and that the *Chriſtian* Emperors, tho as one ſaith, *à ſacris Romanorum & hoc Pontificis nomine abhorrebant, in ſuis tamen Elogiis & nummis paſſim ſe Pontifices maximos dici paſſi ſunt, quod ad hodiernum diem rudera Romana inſpicientibus ſatis conſtat.*

Nor

Nor yet will any one find Cauſe to reflect on the memory of that our *Prince* for want of conſulting his *Judges* in the *interpretation* of his *Laws* in general: nor even of this his *Eccleſiaſtical* Law in particular about the *Explanation* of the *Regal* Power. For *Heylin* in his *Hiſtory* of Archbiſhop *Laud*, ſaith, that *ſo tender was His Majeſty, that before he gave his Conſent that the Canons of* 1640. *ſhould be tender'd to the Clergy, to be ſubſcribed, he caus'd them to be publickly read in Councel, and before the Judges there, and by all whom they were approved*, &c. And if Mr. *Bagſhaw* had conſider'd what himſelf had ſaid of *the Judges having no Right to Expound texts of Scripture*, and how the *Convocation* in that *Canon* did introduce the *Supreme Power given to Kings by God himſelf in the Stripture*, and explain'd by Regal Power, *Kings ruling and commanding in their ſeveral Dominions all Perſons of what rank, or eſtate ſoever, and that they ſhould reſtrain and puniſh with the Temporal Sword all ſtubborn and evil doers*; and likewiſe what was before mention'd in the Second *Paragraph* of the Explanation, *viz.* of *the Care of God's Church committed to Kings in the Scripture*, he would have found the *Interpretation* of the Regal *Supremacy* as built on the Scriptures by that *Canon* (and approved too by the Judges of the Land) to have not been exorbitant.

The words in the 13th of the *Romans*, of the *Higher Powers* being *the Ordinance of God*, and of *bearing not the Sword in vain*, and of being *the Miniſter of God, and a revenger to execute wrath on him that doth Evil*, and of *rendring therefore to all their dues, fear to whom fear, honour to whom honour*; and the words in S. *Peter* of *ſubmitting our ſelves to every Ordinance of man for the Lord's ſake, whether it be to the King as Supreme, or unto Governors, as unto them that are ſent by him for the Puniſhment of evil doers, and for the Praiſe of them that do well*, and other paſſages in Scripture, and particularly in the Old Teſtament, were in the eye of the *Convocation* in their ſo *explaining* the Regal Power, and you may if you pleaſe have them now in your eye, while you are conſidering the Caſe before you, and ſee how far you are bound to *ſubmit to all Governors who ſhall* be employ'd by the *King* in the *executive* Power of his Laws againſt *evil doers*, and for the *praiſe of them that do well*; and how you are not to *diſparage* ſuch Governors who are ſo ſent for ſuch *praiſe*.

But it is not to be wonder'd at that the *Judges* approved of the Contents of that *Explanation* of the *Regal* Supremacy, and particularly of the Power of *puniſhing evil doers* as inherent in the Crown, ſince the ſame hath been *declared* ſo by ſo many *Acts* of Parliament, and of which I ſhall name one to you that I have not yet referr'd to, *viz.* that of 1° *Mariæ*, c. 1. *Seſſ.* 2. of the Second Parliament, of which the *title* is, *The Regal Power is in the Queens Majeſty as fully as it hath been in any her Progenitors*, and where 'tis ſaid that *For as much as the Imperial Crown of this Realm with all Dignities, Honours, Prerogatives, Juriſdictions and Preheminences thereunto annex'd, united and belonging, by the Divine Providence of Almighty God is moſt lawfully and rightfully deſcended and come to the Queen's Highneſs that now is*, &c. *and inveſted in her Royal Perſon according to the Laws of this Realm, and by force and virtue of the ſame all Regal Power, Dignity, Honour, Authority, Preheminence doth appertain and of right ought to appertain and belong unto her Highneſs as to the Sovereign Supreme Governor and Queen of this Realm and the Dominions thereof in as full large and ample manner as it hath done heretofore to any other her moſt noble Progenitors Kings of this Realm*, (the ample manner of *Harry* the 8th's Power is not therein excepted) Nevertheleſs the moſt ancient Statutes of this Realm being made by Kings then reigning, do not only attribute and refer all Prero-

gative, Preheminence, Power and Jurisdiction Royal unto the name of King, but also do give, assign and appoint the Correction and Punishment of all Offenders against the Regality and Dignity of the Crown, and the Laws of this Realm unto the King, &c.

And considering that a Popish *Parliament* of Queen *Mary*'s did give this their august Declarative sense of the *executive* Power, of *punishing all Offenders against the Regality and Dignity of the Crown* (which is the great *Offence* taken at Popery) *and the Laws of the Realm*, as *belonging* to or inherent in our Kings by virtue of their being *Supreme Governors* of the Realm, and that this *Supreme* Power was *Committed to her and her Progenitors by the Divine Providence of Almighty God*, shall your acknowledgments of such *Supreme* Power of your Prince be narrower then any of *Papists*?

You know how wary and careful our *English* Princes have always been that their Subjects might see them hold the reins of the Executive Power of the Law in their hands, and that none but the *stubborn* and *evil doers* need fear the being over-run by it.

And while I happen to think of the memorable *Expression* of a Loyal *Lord* in a *Speech* in a late *Parliament* of the *unreasonableness* of any ones suffering merely by the word *Proditorie* being put into the charge of a thing that was not in its self *Evil*, and *as if it were said that such an one did* traiterously *pass over the Thames in a Boat*: I likewise think of the *reasonableness* of our *Laws* in providing for the common *Safety* by the *Prince* being allow'd to *hold* the *Sail* of the *Executive* Power in his own hands, and which otherwise if ty'd fast about the Boat might cause it upon any sudden gust of wind to be overset.

You know therefore how King *James* the First in his *Apology for the Oath of Allegiance*, in *Answer* to the *Pope's first Breve*, thought himself obliged in *justice* for the maintenance of that *Executive* Power of the Crown to say as to *the Pope's expressing his sorrow for that Persecution which the Catholicks sustain for the Faiths sake, wherein beside the main untruth whereby I am so injuriously used* (as if he had thought it a personal injury to himself that any one in his Realm should be persecuted for Religion) *I must ever avow and maintain as the truth is, according to mine own knowledge, that the late QUEEN of famous Memory never PUNISH'D any Papist for Religion.* He doth not say, *her Laws*, and *Ministers*, but *SHE never punish'd*, &c. He well knew that if *Papists* had been *Punish'd* for their *Religion* in *her* Reign by *Judges*, and *Juries*, and *Sheriffs*, that it was *she* had *punish'd* them. And accordingly he in his *Premonition to Christian Monarchs* doth *more regio*, and with a *style* of Majesty relating to his *Executive* Power, thus tell them, *viz. And yet so far hath both my Heart and Government been from any bitterness, as almost never one of those sharp Additions to former Laws hath ever yet been put in execution.*

Well, Sir, In fine I leave it to you to consider on the whole matter how far the Contents of that Canon, and particularly what is declared therein about *the care of God's Church being so committed to Kings in the Scripture, that they are commended when the Church keeps the right way, and blamed when it runs amiss, and therefore her Government belongs in chief to Kings*, &c. do shew that Kings not only may, but ought out of a regard to their own Souls to provide that where the *safety* of their Subjects *Souls* is concern'd, their *Dispensative* Power by the *interpretation* of their Laws, and the *relaxation* of their *Rigour* in particular Cases may be exerted.

I doubt not but you have observ'd many more Cases wherein the Royal *Martyr* to prevent imminent *peril* of *Soul* was put to it to exert such his Power.

A. I remember not to have read of more.

B. No? If you had read the 39 *Articles* Printed in the *Edition* that I have done, with his *Declaration* prefix'd thereunto, you would find that there being a high *ferment* about the *Arminian* Controverſie in the Church of *England*, and the *Arminian* and *Anti-Arminian* Divines (who both had *ſubſcribed* the *Articles*) appropriating the *ſenſe* of them to both their Perſwaſions, and too many *drawing* them *the ſenſe of them too much aſide*, and all of them profeſſing themſelves bound in Conſcience by the Laws that required their Subſcription to the *Articles*, and that their Subſcription to them, was to be taken in the *Impoſers* ſenſe, and that as to the *Article* of *the King's being Supreme Governor of the Church of* England, it being ſuppoſed (as the words in the *Declaration* are) *Some differences might ariſe concerning the External Polity, Injunctions, Canons, or other Conſtitutions thereto belonging*; His Majeſty by his *Declaration* again *ratifying* the *Articles*, and particularly publiſhing **that he was Supreme Governor of the Church of** England, did notify his Pleaſure, that as to *any ſuch Differences ariſing* as aforeſaid, **the Clergy in their Convocation ſhould order and ſettle them, he approving their Ordinances,** &c. and to the end they might not trouble themſelves or the Church by putting their own *interpretations* on the *Articles*, he Requires their taking the *Articles* in the *Literal and Grammatical ſenſe*, and notifies that *literal* ſenſe as reſtrain'd to the way of the *general* Expreſſions in the *Articles*, and ſuch as the *Divines* of the ſeveral Perſwaſions took as making for them: ſo that now by His Majeſty's thus interpreting that ſenſe, they might warrantably continue ſo to do. And according to what hath been ſaid of *Manna*, that *it was that to every man's taſte wherewith it was pleas'd moſt*, mens ſenſe of the Articles might be ſo too, by means of the *declared* Complaiſance of His Majeſty therewith.

A. One would then the leſs wonder at the *Complaiſance* of the *Clergy* with that King's Power of *Diſpenſing* in his Laws by *Interpreting* or *Declaring*.

B. I could tell you of another paſſage in his Reign that will ſhew you how our *Biſhops* made uſe of that Power as their *Sheat Anchor* to preſerve the *Hierarchy* in the *Storms* it met with: and how then the *Biſhops* iſſuing out the *Proceſſes* of their *Eccleſiaſtical* Courts in their *own* Names, was by the Artifice of the *Faction* improved as an occaſion of making a very great *ferment* in Church and State, and ſuch a one as nothing but the *Royal* Power of *Interpretation*, or of *declaring* the *Law*, could ſettle.

And therefore Archbiſhop *Laud* in his *Epiſtle* to the *King* before his famous *Star-Chamber Speech*, did *in the Name of the Church of* England then think himſelf obliged to apply to the King in a moſt pathetical and ſolemn manner to exert that great *Power* in that Conjuncture: viz. *I do humbly in the Churches name deſire of your Majeſty, that it may be reſolv'd by all the Reverend Judges of* England, *and then Publiſh'd by your Majeſty, that our keeping Courts and iſſuing Proceſs in our own Names, and the like Exceptions formerly taken and now renew'd, are not againſt the Laws of the Realm* (as 'tis moſt certain they are not) *that ſo the Church-Governors may go on cheerfully in their Duty, and the Peoples minds be quieted by this aſſurance, that neither the Law, nor their liberty as Subjects is infringed thereby.*

The many *Pamphleteers* of the *Faction* who attacqued the *Hierarchy*, reproached them with the *Non-obſervance* of *Humane* Laws, and charged their Proceedings with *Illegality*, becauſe by the *Statute* of 1° *E.* 6. c. 2. that required *Proceſſes* Eccleſiaſtical to be in the *King's* name, it was declar'd, *That the Biſhops ſending out their Proceſs in their own Names was contrary*

trary to the Form and Order of the Summons and Proceſs of the Common-Law uſed in this Realm. And therefore as *Heylin* tells us in the Life of Archbiſhop *Laud*, p. 321. in *A.* 1637. the *King* accordingly *iſſued out his Proclamation declaring, That the Biſhops holding their Courts, and iſſuing Proceſs in their own Names were not againſt the Laws of the Realm, and the Judges Reſolutions were therein notify'd to that purpoſe.* And upon all motions afterward for *Prohibitions* to the Eccleſiaſtical Court upon the pretence of their *Proceſſes* not iſſuing out in the *King*'s Name according to that *Statute* of *E.* the 6th, the currant *Law* hath ſtill been in *Weſtminſter-Hall* for keeping up the ſenſe of His Majeſty *declared* in his *Proclamation* as to that Point.

According to the manner then of *praiſing the Bridge we go over*; the *Church* of *England* having in Queen *Elizabeth*'s time been preſerv'd by the Regal Power of *interpreting* expreſs'd in her *Admonition*, and by the like Power in the time of King *Charles* the *Firſt*, and the *ſalus animæ* having been at ſtake as to the *Oath* in her time, and as to the avowed Principle of the Church of *England* about *Humane* Laws *binding* the *Conſcience* in his time; the uſe of that *Diſpenſative* Power being like a *Bridge* that kept them from falling into the *Pit* of *Perdition*, deſerv'd their Praiſe.

That eminent Divine Mr. *John Ley* in his Learn'd Book call'd *Defenſive Doubts and Reaſons for refuſal of the Oath impoſed by the Sixth Canon of the late Synod*, (i. e. that in the *year* 1640.) ſaith there, *p.* 99. and 100, &c. *There are ſome of our Brethren, who (in good will to themſelves and us) have undertaken to expound the Oath ſo as that they and we without ſcruple may take it. And we take kindly their good intention, and in good will to them again requeſt them to conſider, that a Private Interpretation of a Publick Act can give no ſatisfaction unleſs it be either expreſly or virtually allow'd by the higheſt Authority that doth impoſe it: and then it is made Publick*, &c. *But the Authority of Interpretation of any doubt in ſuch a Publick Act, belongs properly not to private but publick Perſons*, &c. *For private Men tho Learn'd, if they take upon them the Interpretation of publick Dictates, may be more like to light on mutual Contradictions of each other, then on the true and proper Conſtruction of the Text they interpret. So did* Vega *and* Soto, Soto *and* Catherinus, *who wrote againſt each other contrary Comments on the Council of* Trent. *In which reſpect it was a wiſe advice given to the Pope by the Biſhop of* Beſtice, *viz. to appoint a Congregation for the expounding of the Councel: and well follow'd by him when he forbade all ſorts of Perſons, Clerks or Laicks (being private Men) to make any Commentaries, Gloſſes, Annotations, or any Interpretation whatſoever on the Decrees of that Councel. Dr.* Burgeſſe *indeed made an Interpretation of his own Subſcription, but there had been no validity in it (as we conceive) unleſs it had been allow'd by the Superior Powers. And ſo it was: for (as he ſaith) It was accepted by King* James: *and the Archbiſhop of* Canterbury *affirm'd it to be the true ſenſe and meaning of the Church of* England. He refers there to Dr. *Burgeſſe* in his *Anſwer to a much applauded Pamphlet*, Præfat. *p.* 26.

A. Your mentioning that of Dr. *Burgeſſe* his *Interpretation* of his *Subſcription* minds me of what I have read at the end of his Book call'd *No Sacrilege nor Sin to alienate or purchaſe Cathedral Lands*, viz. *in his* Poſtſcript to Dr. *Pearſon*, and his *No Neceſſity of Reformation of the Publick Doctrine of the Church of* England, *Printed* A. 1660. where he ſaith, *As touching the Regal Supremacy, we own and will aſſert it as far as you do or dare. Only we had reaſon to take notice of the improper Expreſſion in the 37th Article that* the Queen's Majeſty hath the Supreme Power. *For if the Declaration*

father'd

father'd on the late King, and prefix'd to the Articles, had ſo much Power with his Printer, that he durſt not alter the word Queen *into* King *even in the year* 1642, *and thoſe Articles muſt be read* Verbatim *without Alteration or Explanation, then we ſay again there is a Neceſſity of Reforming that Article in the expreſſion of it: and not to talk at random what was indeed the meaning, unleſs we may have leave when we read it* (Regiâ declaratione non-obſtante) *to declare the ſenſe which the Declaration alloweth us not to do.*

But the truth is, that exception of the *Doctor* to the *Articles* may well paſs for a *Scruple*, or rather a *Cavil*: and at this rate we ſhould be put to it to ſay, *O King interpret for ever.*

B. You ſay right. Dr. *Pierſon* in that Judicious Book of his, call'd *No Neceſſity of Reforming the Doctrine of the Church of* England, well obſerves that the 37th *Article hath expreſs reference to the Queen's Injunctions ſet forth in the year* 1559. *and thoſe Injunctions take particular care,* **that no other Duty, Allegiance, or Bond ſhould be required to the Queen, then was acknowledged to be due to the moſt noble Kings of famous Memory, King** Henry **the** 8th **her Majeſty's Father, or King** Edward **the** 6th, **her Majeſty's Brother.** *The words of the Article declare that the Doctrine contained in it, concerneth all the Kings as Kings. The title in General is of the Civil Magiſtrates, and the words run thus:,* **where we attribute to the Queen's Majeſty the chief Government we give not to our Princes,** &c. *ſhewing that what they gave to her, they gave to all the Kings of* England. *Which will appear more plainly out of the firſt Latine Copy Printed in the time of Queen* Eliz. *in the year* 1563. *read and approved by the Queen, the words whereof are theſe,* **Cum Regiæ Majeſtati ſummam gubernationem tribuimus, quibus titulis intelligimus animos quorundam Calumniatorum offendi, non damus Regibus noſtris aut verbi Dei aut Sacramentorum adminiſtrationem,** &c. *Being therefore the Article expreſly mentioneth and concerneth the Kings of* England, *as they are the Kings of* England, *the mention of the Queen's Majeſty in the Article can make the Doctrine no more doubtful then it doth our Allegiance in that Oath which was made* 1° Eliz. *where the Heirs and Succeſſors of the Queen are to appoint who ſhall accept the Oath, the words of which are* **that the Queen's Highneſs is the only Supreme Governor of this Realm.** *But I hope the Heirs and Succeſſors of Queen* Elizabeth *did never appoint that Oath to be taken in the Name of the Queen's Highneſs, but in their own.*

It may be ſuppoſed that ſome ſuch like *Cavilling* or *Scrupling* humour poſſeſs'd the fancies of ſome in the beginning of the Reign of King *James* the Firſt: and that ſome occaſion was thereby given to that *Prince* in thoſe his *Canons*, *expreſly* therein maintaining the 39 *Articles*, and the Subſcription thereunto, and particularly in the 36th *Canon* there to enjoyn a *Subſcription* to *three* Articles *in ſuch manner and ſort as is there appointed*, and of which the *firſt* is, **That the King's Majeſty under God is the only Supreme Governor of this Realm, and of all other his Highneſs Dominions,** &c. **and that no foreign Prince, Perſon, Prelate, HATH or OUGHT to have any Jurisdiction, Power, Superiority, Preheminence, or Authority Eccleſiaſtical or Spiritual,** &c. and in which the words *have or OUGHT to have*, might poſſibly be inſerted out of a Royal Complaiſance with the Deſires of ſome *Scruplers* in whoſe behalf the Famous Dr. *Rainolds* moved the King at the *Hampton-Court Conference* that to the Poſition in the 37th *Article*, viz. **The Biſhop of Rome hath no Jurisdiction in this Realm of** England, *might be added nor OUGHT to have*: but which motion the King then rejected as a thing ſuperfluous, and ſaying, *Habemus quod jure habemus.*

You may find an Account of this twofold *Subſcription* in *Coke* 4. *Inſt.* c. 74. and where he ſaith, *Subſcription required by the Clergy is twofold: One by force both of an Act of Parliament CONFIRMING and Eſtabliſhing the* 39 *Articles of Religion agreed upon at a Convocation of the Church of* England, *and ratify'd by Queen* Eliz. (13. *Eliz.* c. 12.) *Another by Canons made at a Convocation of the Church of* England, *and ratify'd by King* James.

A. I had thought you told me that the 39 *Articles* owed no *Confirmation* nor *Authority* to that *Act* of the 13th of *Eliz.*

B. I did tell you ſo: and do think that when my Lord *Coke* uſed the word *Confirming*, he ſpake *cum vulgo*, or as the word is taken *minus propriè* and as it is taken in *declarative* Acts of *Parliament* ſometime to mean *declared*, and as I and others may in Diſcourſe ſometimes uſe the word. But (ſpeaking properly) to *confirm* being *firmum facere*, i. e. what was not ſo before, you are not to think that the *Parliament* in 13° *Eliz.* did ſo. They *Enacted* what was by the *Queen* before *authorized*, and as the words there are about the *Articles*, viz. *Put forth by the* Queen's Authority. And you may too for this purpoſe Conſult the *ſtyle* of the *Act* 23° *Eliz.* c. 1. Entituled, *An Act for retaining the Queen's Subjects in their due Obedience*, and where 'tis made *Treaſon* for any to *withdraw any Subjects from their Natural Obedience to her Majeſty, or to withdraw them for that intent from* the Religion now by her Highneſs Authority eſtabliſh'd within her Dominions.

Thus too as to the Queen's *diſabling* ſeveral of the Roman-Catholick *Biſhops* and *Deans* by her Eccleſiaſtical *Commiſſioners* in the beginning of her Reign, purſuant to the *Act* of 1° *Eliz.* c. 1. *for reſtoring to the Crown the Ancient Juriſdiction*; the *Act* of *Parliament* 35° *Eliz.* c. 8. entituled, *Every Deprivation of any Biſhop or Dean made in the beginning of the Queen's Reign ſhall be good: and Archbiſhops, Biſhops and Deans made by the Queen ſhall be adjudged lawful*; begins with acknowledging that the former *were juſtly deprived*, and it is therefore Declared and Enacted by Authority of this Parliament, that all and every Deprivation, &c. and all and every Sentence of Deprivation, &c. had, pronounced and given, &c. ſhall be adjudged, deem'd, and taken good and ſufficient in Law, &c. and as to the latter, *viz.* That all ſuch Archbiſhops, Biſhops and Deans as were ordain'd or made by the Authority or Licence of the Queen's Majeſty, &c. ſhall be taken and adjudged to be lawful, &c. They *confirmed* not what the *Queen* did in *diſabling* the *former*, and *enabling* the *latter*, but only *declared* and *enacted* the validity of what the Queen had done. And here you have again the Judgment of Parliament for approving the Queen's Power of *Enabling and Diſabling*.

And here too (by the way) I am to tell you, that you have *another* judgment of *Parliament* ſuitable to that in 8° *Eliz.* and for the *adjudging and taking to be Lawful the making and ordaining of the Archbiſhops and Biſhops by the Authority or Licence of the Queen's Majeſty*, &c. any ambiguity or queſtion in that behalf heretofore made to the contrary notwithſtanding, and which *QUESTION* before made in the Caſe, I have before ſhew'd to be *diſability*.

A. But I ſuppoſe you have read of that *TWO-FOLD Subſcription* my Lord *Coke* ſpeaks of, repreſented as a *Gravamen* by ſome.

B. I have ſo: and the laſt Book I read that ſo repreſents it is, the *Anſwer to Dr.* Stillingfleet's *Sermon by ſome Non-Conformiſts*, &c. *Printed* A. 1680. and where in *p.* 29. they thus expreſs their deſires, *viz. That all New deviſed Oaths, Subſcriptions and Declarations, together with the Canonical*

nical Oath, and the Subſcription in the Canons be ſuſpended for the time to come. If that be too much, we ſhall content our ſelves with a modeſter motion, that whatſoever theſe Declarations be that are required to be made, ſubſcribed, or ſworn, they may be impoſed only as to the matter and end, leaving the takers but free to the uſe of their own Expreſſions. And this expedient we gather from the Lord Coke, *who hath providently (as it were) againſt ſuch a Seaſon laid in this Obſervation*, The form of the Subſcription ſet down in the Canons ratify'd by King *James*, was not expreſs'd in the Act of the 13th of *Eliz.* 4. *Inſt.* c. 74. *And conſequently if the Clergy enjoy'd this freedom till then, in reference to the particulars therein contain'd, what hinders why they might not have the ſame reſtored in reference alſo to others?*

It was the ſecond *Article* enjoyn'd by that Canon to be *ſubſcribed*, viz. That *the Book of Common-Prayer*, &c. *containeth in it nothing contrary to the Word of God, and that it may lawfully be uſed*, &c. at which they took ſo much offence, and to which the *Act* of *Parliament* required not their Subſcription.

A. I perceive then my Lord *Coke* doth not reflect on the *form* of *Subſcription*, as enjoyn'd by the 36th *Canon* of King *James*, and by his *Regal* Authority *out* of *Parliament* as illegal, notwithſtanding what had been *enacted* in the 13th of Queen *Elizabeth*.

B. He doth not. And he there further ſaith, *By the Statute of* 13. Eliz. *the Delinquent is diſabled and deprived* ipſo facto: *but the Delinquent againſt the Canon of King* James *is to be proceeded withall by the Cenſures of the Church. And I heard* Wray *Chief Juſtice in the King's Bench*, Paſch. 23. El. *report, That where one* Smith *ſubſcribed to the ſaid* 39 *Articles of Religion with this addition,* ſo far forth as the ſame were agreeable to the Word o. God, *that it was reſolv'd by him and all the Judges of* England, *that this Subſcription was not according to the Statute of* 13. Eliz. *becauſe this Statute required an abſolute Subſcription*, &c. *Beſides this Subſcription when any Clerk is admitted and inſtituted to any Benefice, he is ſworn to Canonical Obedience to his Dioceſan.*

But as to his ſaying that *the Delinquent againſt this Canon is to be proceeded withall by the Cenſures of the Church*; I ſhall obſerve that the *beginning* of the *Canon* doth *incapacitate* any to be *receiv'd into the Miniſtry* who doth not *ſubſcribe* the *three Articles* in it, and that the *Canon* doth afterward put ſome temporary *Diſabilities* on *Biſhops* who ſhall *Ordain*, *Admit* or *Licenſe* any one, *except he firſt have ſubſcribed in manner and form there appointed*: and it is the *Univerſities* if *offending* that the Canon leaves *to the Danger of the Law and His Majeſty's Cenſure.*

Here then you ſee King *James* the Firſt did *out* of *Parliament* add a *new* Subſcription to what was required by the *Act* of *Parliament*, and did likewiſe *out* of *Parliament* make *incapacity* to be the *Puniſhment* of *refuſing* ſuch new Subſcription.

And I need not tell you that that *Power* ſo exerciſed by that *Prince* out of *Parliament* hath been *approved* not only by all the *Biſhops* of the *Church* of *England*, as putting the *Form* of *Subſcription* required by that *Canon* in execution ever ſince and to this day in *lieu* of the *form* required by the 13th of *Eliz.* but (as I may ſay) *virtually* and *tacitly* by all our *Kings* and *Parliaments* ever ſince, who have acquieſced in the ſame. But what if I ſhould tell you that the *Authority* of the *King* in thus making that *Canon* about *Subſcription*, hath been ſince expreſly *approved* in *Parliament*?

A. I ſhould be moſt ready to hear it.

B. You

B. You may therefore pleaſe to conſult the *Act* for *Uniformity* 16° *Car.* 2. and in the latter end of it you will ſee that in a *Proviſo* referring to the 39 *Articles* as *agreed on by the Archbiſhops* &c. A. 1562. and *particularly* to the 36th therein about *the Book of Conſecration of Archbiſhops*, &c. *ſet forth in the time of* Edward *the* 6th, as *containing all things neceſſary to ſuch Conſecration and Ordering*, &c. It is *Enacted*, &c. **that all Subſcriptions hereafter to be had or made to the ſaid Articles by any Deacon, Prieſt, &c. or other perſon whatſoever, who by this Act or any OTHER LAW now in force is required to ſubſcribe unto the ſaid Articles ſhall be conſtrued and taken to extend and ſhall be applyed (for and touching the ſaid 36th Article) to the Book containing the form and manner of making, ordaining, and conſecrating of Biſhops, Prieſts, &c. in this Act mentioned in ſuch ſort and manner as the ſame did heretofore extend to the Book ſet forth in the time of King** Edward **the** 6th **mention'd in the ſaid** 36th **Article, any thing in the ſaid Article, or in any Statute, Act, or Canon heretofore had or made to the Contrary hereof in any wiſe notwithſtanding.**

It is clear that the *Parliament* had then their *Eye* on the *Act* of 13. *Eliz.* and on that *Canon* of King *James*, and which you may take as *referr'd* to by the words, *or any other Law now in force* (for ſo they then knew it to be, and as it ſtill is, tho with the *interpretation* extended by the *Act* to it) and afterward by the word *Canon.*

But one may gueſs that by the Authority of ſome of the *Lords* the *Biſhops* there was before the making of this *Canon* of King *James*, and after the *Act* of 13. *Eliz.* in her Reign, ſome *Subſcription* under *diſabling* Penalties *required* of *Miniſters* beyond what that *Statute* required, by what the *Author* of *Certain Conſiderations tending to promote Peace* mentions, in p. 4. viz. *That in the* 30*th year of the Reign of Queen* Elizabeth, *the Houſe of Commons preſented to the Lords Spiritual and Temporal a Petition containing divers particulars, for the redreſs whereof they deſire, that no Oath or Subſcription might be tender'd to any at their entrance into the Miniſtry, but ſuch as is expreſly preſcribed by the Statutes of the Realm, except the Oath againſt Corrupt entring, that they may not be troubled for the omiſſion of ſome Rites, or Portions preſcribed in the Book of Common Prayer: that ſuch as had been ſuſpended for no other Offence, but only for not ſubſcribing might be reſtored.*

A. It ſeems thoſe Biſhops then did as your Expreſſion was, *Diſpenſare in lege*, and were (as I may ſay) *Non-conformiſts* to it, by going *beyond* it. For they were obliged *ſapere ad Regulam*; and all *Conformity* is *reſpectu regulæ*, and he who doth *over-ſhoot*, or who over-does what is enjoyn'd, is a *Non-conformiſt.*

B. You here put me in mind how ſome of our *Biſhops* and *Clergy* have been thus *Non-conformiſts* in over-ſhooting their mark, at the ſame time that they have with undiſtinguiſhing ſeverity executed the rigour of the Laws againſt all who did *ſhoot* ſhort. The Royal *Martyr* in his *Declaration to all his Loving Subjects*, *Publiſh'd with the Advice of his Privy Councel*, A. 1641. refers to ſome *Ceremonies* in our *Church* **which have been uſed without any legal Warrant or Injunction, and which already are, or ſpeedily may be aboliſh'd.**

A. But I a little wonder that a *Houſe* of *Commons* ſhould *Petition* for the *Diſpenſing* with ſome *legal* Rites, and required both by *Injunctions* and *Canons*, and by *Acts* of Parliament.

B. I do not wonder at it at all. For *Conjunctures* having happen'd when ſome *Non-conformiſts* having been *tender* of the Peace of the Government,

you

you need not wonder at any tenderneſs in it for them. For as in the Conjuncture of the *Reſtoration* of King *Charles* the Second, very many of the *Presbyterians* and of other Sects then ſhewing their *Loyalty* (the *Author* I lately cited taking notice thus of the *Declaration*, A. 1660. viz. *in which his Majeſty ſaith Our preſent Conſideration and work is to gratifie the private Conſciences of thoſe who are grieved with ſome Ceremonies, by indulging to and diſpenſing with the omitting of thoſe Ceremonies. A Member of the Houſe of Commons in an Epiſtle to His Majeſty uſeth theſe words*, viz. *which Indulgent Declaration ſo raviſhed the hearts of all your Loving Subjects, that your whole Houſe of Commons, their Repreſentatives then aſſembled in Parliament, immediately after the Publication*, October 8th. 1660, *repair'd in a Body to* White-hall, *and there by their Speaker's Oration in the Banquetting-Houſe, expreſs'd their extraordinary great Joy, and preſented their general Thanks to your Majeſty for this your Majeſty's moſt gracious Declaration and Diſpenſation with their Conſciences in Matters not being of the ſubſtance or eſſence of Religion, which gave abundant ſatisfaction to all peaceable ſober-minded Men, and ſuch as are truly Religious, in which return of their Thanks they were all unanimous*, Nemine Contradicente, *then Ordering a Bill in Purſuance of your Majeſty's Declaration: Note, that this was that Houſe of Commons, which together with the Houſe of Lords brought His Majeſty to the Throne*) ſo long before, namely in the *firſt* year of King *Charles* the Firſt, and *A.* 1625. *both Houſes* preſented a *Petition* to the *King*, wherein they deſire *that His Majeſty would pleaſe to adviſe the Biſhops by fatherly entreaty and tender uſage to reduce to the peaceable and orderly Service of the Church ſuch able Miniſters as have been formerly* SILENCED, &c. and which is in effect, all one, ſuch *able Miniſters* as have been formerly *diſabled*.

A. I am highly pleas'd with your further bringing any thing to me like *Judgment* of *Parliament* that may ſtrengthen the Regal Power of *interpreting*, or of *diſpenſing* with *diſability*. We have diſcours'd of the Subject a pretty while together at this Meeting, and I muſt acknowledge you have entertain'd me with an account of many *Statutes* that have propp'd up the *Regal* Power of *diſpenſing* with *diſability*: and that too (tho you obſerv'd it not to me) not only in their *Preambles*, but in their *enacting* parts, the which I account more momentous. Nor can I forbear obſerving it to you, that in the late Printed *Books* of ſome who *aſſerted* this *diſpenſative* Power, nothing like *Judgment* of *Parliament* hath been *cited* in the caſe for it, but that out of *Rot. Parl.* 1. *H.* 5. 11. 22. out of *Rolle Tit. Prerogative le Roy, fol.* 180. viz. *The Commons prayed that the Statutes for voiding of Aliens out of the Kingdom might be executed, to which the King agreed ſaving his Prerogative, that he might diſpenſe with ſuch as he pleas'd. And upon this the Commons anſwer'd, that their intention was no other, nor ever ſhould be, by the help of God.*

But this was only the *judgment* of a *Houſe* of *Commons*; and that is *ſhort* of the *Authority* of a *Houſe* of *Lords* concurring with them, tho but in a *Petitionary* manner, that the Regal *Diſpenſative* Power might be exerted: and which *latter* is far ſhort of the Authority of an *Act* of *Parliament*. And among the many *Parliamentary* Recognitions of the *Diſpenſative* Power you have mention'd to me, that which you told me at our *firſt* meeting of the *Act* of *Uniformity* 16° *Car.* 2. leaving *Aliens* or *Foreigners* of the Reform'd Churches that were then *allow'd* or tolerated by the King's Majeſty, or that ſhould be *allow'd* by him, his Heirs and Succeſſors, to be ſecured under the Wing of Prerogative from all the *Penalties* in that *Act*, was a greater Preſident of a Parliament's deference to the *Diſpenſative* Power.

But here it falls in my way to ask you if the *Parliament* in that Act, *interpreting* and *expounding* the *Subſcription* to the 36th *Article* (as you before mention'd) did not ſhew ſome want of tenderneſs to the *Regal* Power of *interpreting*?

B. Not in the leaſt. The King thought fit in his *Legiſlative* Capacity, and with the Concurrence of the three Eſtates to iſſue forth ſuch interpretation, to the end it might be perpetuated. But you will find that they were ſo tender of that branch of Prerogative, namely of the Regal Power of interpreting *out* of *Parliament*, that having referr'd to the King's *Declaration* of the 25th of *October*, 1660. (*i. e.* that concerning *Eccleſiaſtical Affairs* we ſpoke of before) and mention'd that according to that **he had granted his Commiſſion to ſeveral Biſhops and other Divines to review the Book of Common Prayer, and to prepare ſuch Alterations and Additions as they thought fit to offer, and that afterwards the Convocations of both the Provinces of** Canterbury and York, **being by His Majeſty called,** &c. **His Majeſty hath been pleas'd to Authorize the Preſidents of the ſaid Convocation, and other the Biſhops and Clergy of the ſame to review the Book of Common Prayer, and the Book of the form and manner of the making and conſecrating of Biſhops, Prieſts,** &c. **and that they ſhould make ſuch Additions and Alterations in the ſaid Books as to them ſhould ſeem meet, and ſhould preſent the ſame to His Majeſty for his further Allowance or Confirmation**, and then ſetting forth that the ſame was accordingly done, and that ſome *alterations* were inſerted into thoſe Books by the *Convocations*, and by them *Preſented* to His Majeſty, and *all which His Majeſty having conſider'd hath fully approved*, it then follows, **that His Majeſty hath recommended to this preſent Parliament that the Books of Common Prayer,** &c. **with the Alterations and Additions which have been ſo made and preſented to His Majeſty by the ſaid Convocations, be the Book which ſhall be appointed to be uſed,** &c. **in all Pariſh Churches and Chapels,** &c. And it is upon the *foundation* of what His *Majeſty* did as before-mention'd, that the following *enacting* Clauſes with their Sanctions and Penalties are built.

And you may if you will take notice of a *Proviſo* toward the end of the *Act*, being very tender of not hurting what King *James* by his Prerogative did in *Uniting* the *Prebendſhip* to the *Profeſſor* of *Law* in *Oxon* for the time being, and whereby that *King* diſpens'd with the *incapacity* of *Lay-men*, as to the enjoyment of ſuch *Prebendſhip*: but the *Act* and the *Proviſo* takes care to perpetuate the King's Profeſſor's enjoying the ſame, and leaves the *Prerogative* at liberty to *diſpenſe* with ſuch *diſability* in the Caſe.

In ſhort, you ſee how *tender* that *Parliament* was of *Prerogative*, and tho they thought it not fit to give ſuch loud *Applauſes* to his late Majeſty's *Declaration* of *October* the 25th, *A.* 1660. before-mention'd, wherein ſo much of the *Diſpenſative* Power was exerted, yet you find they *refer* to it with reſpect.

A. I have almoſt forgot the particulars of the *Diſpenſative* Power therein exerted.

B. I ſhall tell you that the King having there mention'd (and what the *Act* takes notice of) his ſaying *that he would appoint ſome Divines to review the Common Prayer Book, and to make ſuch Alterations as ſhall be thought moſt neceſſary*, &c. it then ſaith, **Our Will and Pleaſure is, that none be puniſh'd or troubled for not uſing it until it be review'd, and effectually reform'd.** He there ſpeaks ſeveral times of **Diſpenſing** with Ceremonies, that were by Law eſtabliſh'd. It is there likewiſe ſaid, **Becauſe ſome men otherwiſe Pious and Learned ſay, They cannot conform unto the Subſcription**

ſcription required by the Canon, nor take the Oath of Canonical Obedience, we are Content, and it is Our Will and Pleaſure (ſo they take the Oaths of Allegiance and Supremacy) that they ſhall receive Ordination, Inſtitution and Induction, and ſhall be permitted to exerciſe their Function, and to enjoy the Profits of their Livings without the ſaid Subſcription or Oath of Canonical Obedience, &c.

A. I ſee here is King *James* the Firſt's *incapacitating* Canon *diſpens'd* with, and indeed *ſuſpended.*

B. The *Declaration* goeth on with taking care that **None be Judged to forfeit his Preſentation, or Benefice, or be deprived of it upon the Statute of the** 13th of Elizabeth, *c.* 12. **ſo he read and declare his Aſſent to all the Articles of Religion, which only contain the Confeſſion of the true Chriſtian Faith, and the Doctrine of the Sacraments compriſed in the Book of Articles in the ſaid Statute mentioned.** And this *Declaration* had before expreſs'd His Majeſty's mindfulneſs of his *Declaration* from *Bredagh*, and his ſaying, **We publiſh'd in our Declaration from** Bredagh, **a Liberty to tender Conſciences, and that no man ſhould be diſquieted or call'd in Queſtion for Differences of Opinion in Matters of Religion, which do not diſturb the Peace of the Kingdom, and that we ſhall be ready to conſent to ſuch an Act of Parliament as upon mature deliberation ſhall be offer'd us for the full granting that Indulgence.** Here was a *Liberty* of *Conſcience* granted and publiſh'd, and Heterodoxy about the very *Articles* of *Religion* tolerated, and a throwing off of *Penal* Laws, and for which Declaration I ſhould have told you, that *Baker's Hiſtory*, p. 703. mentions, *that the Houſe of Lords order'd Thanks to be given to the Meſſenger who brought that gracious* Declaration.

A. And yet you ſay the *Declaration* October 25. 1660 thus *diſpenſing* with *diſability* incurr'd by the *Canon*, and the 13th of *Eliz.* and by Queen *Elizabeth's Act* of *Uniformity*, was both *approved* and *applauded* by the *former* Parliament. I have not heard of the like in the kind of it.

B. No doubt but the *Author* there referr'd to the *Declaration* of *Octob.* 25. A. 1660. for which the *Houſe* of *Commons* ſo expreſs'd their *thanks*: however by the ſuppoſed careleſsneſs of the *Printer*, the Publication is ſaid to be *October* 8th. 1660. For the *words* by him *cited* as ſaid by his Majeſty, *viz. Our preſent Conſideration and work is to gratify*, &c. are in that *Declaration*, p. 15. and 16.

But if it were not for *cloying* you with other like *Inſtances*, I could tell you of the like in the *beginning* of the *Reign* of King *James* the Firſt.

A. I pray ſpeak not of *cloying*. My Patience may be ſoon ſurfeited with two or three ſuch things as ſome call Preſidents. But this thing call'd *Judgment* of *Parliament* carries with it ſo much *weight* as well as *Veneration*, that you can no way more oblige me then by going on to entertain me with *Inſtances* of that kind.

B. Why, then I can tell you if you will at any time turn to your *Collection* of *Proclamations* in the time of King *James* the *Firſt*, you will find that in his *Proclamation* of *March* the 5th, the *firſt* year of his Reign, he intimates that **with the Conſent of the Biſhops preſent in the** Hampton-Court **Conference he thought meet that ſome ſmall things might rather be explain'd then changed in the Book of Common Prayer, and for that end gave forth his Commiſſion under the Great Seal of** England, **according to the Form which the Laws of this Realm in like Caſe preſcribed to be uſed to make the ſaid Explanation, and to cauſe the whole Book of Common Prayer with the ſame Explanation to be newly Printed, which being done and eſtabliſh'd, anew after ſo ſerious a Deliberation,**

tion, &c. we have thought it neceſſary to make known by Proclamation our authorizing of the ſame, and to require and enjoyn all men, as well Eccleſiaſtical as Temporal to Conform themſelves to it, as the only publick Form of ſerving God, eſtabliſh'd and allow'd to be in this Realm. And the rather for that all the Learned Men who were there preſent, as well of the Biſhops as others, promiſed their Conformity in the practice of it, only making ſute to us that ſome few might be born with for a time. Wherefore we require all Archbiſhops, Biſhops, and all other publick Miniſters, as well Eccleſiaſtical as Civil, to do their Duties in cauſing the ſame to be obey'd, and in puniſhing the Offenders according to the Laws of the Realm heretofore eſtabliſh'd for the Authorizing the ſaid Book of Common Prayer.

You ſee there that all the *Biſhops* and the great *Parade* of the *literati* preſent at that famous *Conference*, did *implore* the King for the exerciſe of his *Diſpenſative* Power for a while to ſome *few*.

But what is more conſiderable is, that the *King* here doth make a general *relaxation* of the *Bond* of Queen *Elizabeth*'s *Act* of *Uniformity* in ſome things; and inſtead of inſerting an expreſs *Clauſe* of *diſcharging* from the *Penalties* of that *Act*, all that uſe the *Common Prayer Book* with the King's *Alterations* or *Explanations*, as Queen *Elizabeth*'s *Admonition* did in relation to thoſe who *took* the *Oath* of *Supremacy* in the *ſenſe* of her *Interpretation*, (a thing indeed not neceſſary for either of them to have done when they had *looſen'd* the *bond* of the *Obſervance* of the *Law*) he enjoyns the *uniform* uſage of the *Book* of *Common Prayer*, as by him interpreted or *explain'd* (the title of the Proclamation being A *Proclamation for the authorizing an Uniformity of the Book of Common Prayer to be uſed throughout the Realm*) under the *diſabling* Puniſhments of Queen *Elizabeth*'s *Act* of *Uniformity*; the *Biſhops* all this while being miniſterial to the King in his Power of thus interpreting, and *explaining* an Act of *Parliament*, and the *looſening* of its *Obligation* both as to themſelves and others.

I am to tell you, that in that *Proclamation* of *March* the *fifth*, the *King* refers to a *Proclamation* he had before Publiſh'd on the 24th of *October* then laſt paſt, wherein he gave the *Puritan* Divines an intimation of the *Conference* he intended to have: and in which he reflects on the heat of their Spirits as tending rather to Combuſtion then Reformation, which (ſaith he) if there be Cauſe to make, is more in our hearts then theirs, &c. and afterwards ſaith, we are not ignorant that time may have brought in ſome Corruptions, which may deſerve a review and amendment, which if by the Aſſembly intended by us, we ſhall find to be ſo indeed, we will therein proceed according to the Laws and Cuſtoms of this Realm by Advice of our Councel, or in our High Court of Parliament, or by Convocation of our Clergy, as we ſhall find reaſon to lead us: not doubting but that in ſuch an orderly proceeding, we ſhall have the Prelates & others of our Clergy no leſs willing and far more able to afford us their Duty and Service, then any other whoſe Zeal doth go ſo faſt before their diſcretion.

And the *Proclamation* in *March* following ſhew'd you how the King's reaſon lead him in his *Proceeding* in the Affair *according to the Laws and Cuſtoms of this Realm*, and how loyally his *Biſhops* and *Clergy* acquieſced therein.

A. I remember I have read both theſe *Proclamations*: and I doubt not but that *Hampton-Court Conference* made a great *ferment* in the Body of the People, tho none in the *Orthodox* Clergy. But I ſhould be glad to know whether it made any *fermentation* in the Body of the People *Repreſentative*, and

and what was the *Result* of it? Did the *Parliament* acquiesce in what the King had done as aforesaid? For if so; they had done as Queen *Elizabeth*'s Parliament in publickly *approving* what she by her own Ecclesiastical *Supremacy* did in discharging the *disabling* Penalties in her first *Act* of *Parliament*, and in *relaxing* by her *interpretation*, the *vinculum* for its observance in that sense that many had before put on it.

B. King *James* his *Parliament* did in effect, the very self-same thing. And I shall give you the account of it out of his *Proclamation* of the 16*th* of *July*, A. 1604. in the Second *year* of his Reign: for there having spoke of that *Conference* and of his having *Publish'd* by *Proclamation* what was the *issue* of it, and *his hoping that when the same should be made known all reasonable Men would have rested satisfy'd with that which had been done, and not have moved further trouble of Speech of Matters whereof so solemn and advised deliberation had been made*, His Majesty's following words are, **Notwithstanding at the late Assembly of our Parliament, there wanted not many who renew'd with no little earnestness the Questions before determin'd, and many more as well about the Book of Common Prayer, as other Matters of Church Government, and importuned us for our assent to many Alterations therein: but yet with such Success, as when they heard both our own Speeches made to them at sundry times, shewing the Reasons of our former Proceedings in those Matters, and likewise had had Conference with some Bishops, and other Lords of the Upper House about the same, they desisted from further Prosecution thereof, finding that of all things that might any way tend to the furtherance of Religion and of Establishment of a Ministry fit for the same, we had before with the Advice of our Council, had such Consideration as the present state of things would bear, and taken order how the same should be prosecuted by such means as might be used without any publick disturbance or innovation.**

And in how vigorous a State the *Dispensative* Power as to the *Non-conformists* afterward continued in the Reign of that Prince appears by what I have before cited of an Application made to him by the House of Commons for the exercise of the same to the Non-conformists, in the 10th *year* of his Reign.

Moreover how by *Tacit* Dispensation he *dispens'd* with the *Disabilities* that Roman Catholick *Physicians* and *Lawyers* had incurr'd by his *Acts* of *Parliament*, I have told you. But what if I should now tell you how afterwards he did take care as it were *unâ liturâ*, to *delete* the *Execution* of all the *Penal* Laws, *disabling* ones, and others, against the *Roman Catholicks*; and that as to what he did therein, the most zealous Protestants among his *Bishops*, and the Lords *Temporal* and others of his *Privy Council*, did concur with him in so doing?

A. I think you would tell me of that which was very strange.

B. As in the *Happy future State of* England it was with an intent to detect the Degeneracy and Vanity of the *Politick* and *Protestant-would-be's* of the Age who pretended to Advance Religion by Excluding the next Heir, in *p.* 219. shewn that *one of the general and publick Articles sent by King* James *the First to his Embassador in* Spain, *in Order to the Match with the Infanta was, that the Children of this Marriage shall no way be compell'd or constrain'd in point of Conscience or Religion, wherefore there is no doubt that their title shall be prejudiced in case it should please God that they turn'd Catholicks, and that it was afterward sent as an additional Article offer'd from* England, *that the King of* Great Britain *and Prince of* Wales *should bind themselves by Oath for the Observance of the Articles, and that the Privy*

Council ſhould ſign the ſame under their Hands, and that accordingly the Articles were ſign'd by Archbiſhop Abbot, John *Biſhop of* Lincoln, *Keeper of the Great Seal,* Lionel *Earl of* Middleſex, *Lord high Treaſurer of* England, Henry *Viſcount* Mandevile, *Lord Preſident of the Council,* Edward *Earl of* Worceſter, *Lord Privy Seal,* Lewis *Duke of* Richmond *and* Lennox *Lord high Steward of the Houſhold,* James *Marqueſs of* Hamilton, James *Earl of* Carliſle, Lancelot *Biſhop of* Wincheſter, Oliver *Viſcount* Grandiſon, Arthur *Baron* Chicheſter *of* Belfaſt, *Lord Treaſurer of* Ireland, *Sir* Thomas Edmonds *Knight, Treaſurer of the Houſhold, Sir* John Suckling, *Comptroller of the Houſhold, Sir* George Calvert, *and Sir* Edward Conway, *Principal Secretaries of State, Sir* Richard Weſton, *Chancellor of the Exchequer, Sir* Julius Cæſar, *Mr. of the Rolls*; and for the truth of which Facts, *reference* is there made to Mr. *Prynne's Introduction to the Archbiſhop of* Canterbury's *Trial,* p. 43; ſo you may there read it in *p.* 44. that ſome *private* Articles were agreed on, and probably were Sworn to by the ſame Perſons that the other general ones were: and of which *private* ones, the *firſt* was in ſhort, That *none of the Penal Laws againſt Roman Catholicks ſhould at any time hereafter be put in Execution.*

But you may thus ſee it at large: *viz. That particular Laws made againſt Roman Catholicks, under which other Subjects of our Realms are not comprehended, and to whoſe Obſervation all generally are not obliged, as likewiſe general Laws, under which all are equally Compriſed; if ſo be they are ſuch as are repugnant to the Romiſh Religion, ſhall not at any time hereafter by any means or chance whatſoever directly or indirectly, be commanded to be put in Execution againſt the ſaid Roman-Catholicks. And we will cauſe that our Councel ſhall take the ſame Oath, as far as it pertains to them, and belongs to the Execution which by the hands of them and their Miniſters is to be exerciſed.*

The 2*d* was, *That no other Laws ſhall hereafter be made anew againſt the ſaid Roman Catholicks; but that there ſhall be a perpetual Toleration of the Roman Catholick Religion within Private Houſes throughout all our Realms and Dominions, which we will have to be underſtood, as well of our Kingdom of* Scotland *and* Ireland, *as in* England, &c.

And the 4*th* was, *That we will interpoſe our Authority, and will do as much as in us ſhall lie, that the Parliament ſhall approve, confirm and ratifie all and ſingular Articles in favour of the Roman-Catholicks, capitulated between the moſt renowned Kings, by reaſon of this Marriage; and that the ſaid Parliament ſhall revoke and abrogate the particular Laws made againſt the ſaid Roman-Catholicks,* &c.

And the Concluſion there is, viz. *That we will interpoſe our Authority, and will do as much as in us ſhall lie, that the Parliament ſhall approve, confirm and ratifie all and ſingular Articles in favour of the Roman-Catholicks, capitulated between the moſt renowned Kings, by reaſon of this Marriage; and that the ſaid Parliament ſhall revoke and abrogate the particular Laws made againſt the ſaid Roman-Catholicks, to whoſe obſervance alſo: the reſt of our Subjects and Vaſſals are not obliged; as likewiſe the general Laws under which all are equally comprehended, to wit, as to the Roman-Catholicks, if they be ſuch as is aforeſaid, which are repugnant to the Roman-Catholick Religion: and that hereafter we will not conſent, that the ſaid Parliament ſhould ever at any time Enact or Write any other new Laws againſt Roman-Catholicks. We accounting all and ſingular the preceding Articles, ratified and accepted, out of certain Knowledge, as far as they concern us, our Heirs or Succeſſors, approve, ratifie, applaud, and promiſe,* bonâ fide, *and in the word of a King by theſe Preſents inviolably, firmly, well and faithfully to keep, obſerve,*

obſerve, and fulfill the ſame, and to cauſe them to be kept, obſerved and fulfilled without any Exception or Contradiction, and do confirm the ſame by Oath upon the holy Evangeliſts, notwithſtanding any Opinions, Sentences or Laws whatſoever to the contrary: In the preſence of the moſt Illuſtrious Don John de Mendoza, *Marqueſs of* Inojoſa, *and* Don Charles Coloma, *Extraordinary Ambaſſadors of the Catholick King, of* George Calvert *Knight, one of our Chief Secretaries, of* Edward Conway *Knight another of our Chief Secretaries, of* Francis Cottington *Baronet, of the Privy Councel to our Son the Prince, of* Francis de Corondelet, *Apoſtolical (or the Pope's) Prothonotary, and Arch-Deacon of* Cambray. *Dated at our Palace at* Weſtminſter, *the* 20 *day of* July, 1623. *in the Engliſh ſtyle.*

Jacobus, *Rex.*

A Compared and true Copy.
George Calvert, *Chief Secretary.*

The Form of the Oath which the Lords of the Councel took to the former Articles is this which followeth, (found among the Lord Cottington's *Papers.)*

Formula Juramenti à Conſiliariis Præſtandi.

Ego N. *Juro me debitè plenéque obſervaturum, quantum ad me ſpectat, omnes & ſingulos Articulos, qui in tractatu Matrimonii, inter Sereniſſimum Carolum, Walliæ Principem, & Sereniſſimam Dominam Donnam Mariam Hiſpaniarum Infantem, continentur. JURO ETIAM, Quod neque per me, nec per Miniſtrum aliquem inferiorem mihi inſervientem, legem ullam contra quemcunque Catholicum Romanum conſcriptum executioni mandabo, aut mandari faciam, Pœnamve ullam ab earum aliqua irrogatam exigam. Sed in omnibus quæ ad me pertinent, Ordines à Majeſtate ſua ex ea parte conſtitutos fideliter obſervabo.*

Thus far Mr. *Prynne*; who verifies the Facts above-mention'd, not only from my Lord *Cottington's* Papers, but from the *Mercure Francois*, Tom. 9. *A.* 1624. *p.* 25, 26, 27. and on which *Author* he in *p.* 47. beſtows the *Character* of *one of the trueſt Hiſtorians of this latter Age:* and whom Mr. *Prynne* had before in *p.* 40. cited for the truth of the general *Articles* referring to *Tom* 9. p. 11. and 28. And I ſhall here obſerve to you, that what Mr. *Prynne* hath ſet down as aforeſaid, to be the *Form* of the *Oath* took by the *Lords* of the *Councel* to the *former* Articles, doth appear to be referr'd by him to *both* ſorts of *Articles*, viz. both the *general* and the *private* ones. For tho toward the end of the *general* Articles it appear'd only that *the King and Prince were to be Sworn that all the Privy Councellors ſhould ſign thoſe Articles under their hands*, and that the King *Subſcribed* thoſe *Articles*, and was *ſworn* to them in the *preſence* of thoſe *Biſhops* and other *Privy Councellors* before named; yet the *firſt* of the *private* Articles agreeing that *the Councel ſhould take the Oath as far as pertain'd to them, and belong'd to the Execution which by the hands of them and their Miniſters is to be exerciſed*, that the *Penal* Laws ſhould not be *executed* againſt *Roman-Catholicks*, I account it appears according to Mr. *Prynne* that the Privy Councellors were Sworn to both Articles together: and that by the words of *JURO ETIAM*, &c. the *private* Articles were referr'd to; and the which will appear the more manifeſt, if you conſider that the *general* Articles had not one word therein for the *tolerating* of more *Papiſts* then thoſe of the *Infanta's* Family, and ſuch who particularly belong'd to her. Nor was there any thing more as to the *Privy Councellors* agreed to in the *general* Articles, then their ſigning them. And both the *general* and *private* Articles bearing the

the ſame Date, it may be the rather ſuppoſed that *purſuant* to the firſt *private* Article, containing the King's Covenant for the Privy Councel's being *ſworn* to them, that the *Biſhops* and the other *Privy Councellors* might then be *ſworn* to them, as well as their having then particularly ſigned or *ſubſcribed* the *general* Articles appears: for ſo Mr. *Prynne*'s words are, p. 44. *The King and the Embaſſadors went to the Councel-Chamber, where all the Lords of the Councel ſeal'd and ſubſcribed the general Articles of the Marriage*, &c.

A. But I account you are not ignorant how much it hath been obſerv'd that Mr. *Prynne*, who was ſo voluminous a Writer, did too much take his *Quotations* on truſt; and that therefore what he had as out of the *Mercure Francois* might not be rightly cited.

B. Admitting that Mr. *Prynne* being ſo infinite in his Quotations might often erre that way, I ſhall tell you, that I engaging a Learned Man of the *Univerſity* of *Oxford* to conſult Mr. *Prynne*'s Quotations out of the *Mercure* (of which the *Tomes* are in the *Bodleian* Library) he return'd me word, that they exactly agreed with the *Author* in the places cited by Mr. *Prynne*.

A. But one would ſcarce think that Archbiſhop *Abbot* ſhould ſwear to theſe private *Articles*; for there went about a *Letter* of his in that *Conjuncture*, by the warm name of *his Remonſtrance to His Majeſty* againſt the *Match*, and the *toleration* of the Roman-Catholicks.

B. I grant that there did: and Mr. *Prynne* in *p.* 39. and 40. ſets down the *Letter*; and he calls it *A Remonſtrance:* and the Archbiſhop is there brought in, ſaying thus, *viz. This Toleration which you endeavour to ſet up by your Proclamation, cannot be done without an Act of Parliament*, &c. But *Heylin* in his *Hiſtory of the Presbyterians*, repreſents this as a Sham-Letter, and put upon the Archbiſhop: and ſaith, that *the Archbiſhop could not be ſo ill a Stateſman* (*having been long a Privy Councellor*) *as not to know that he who ſits at Helm, muſt ſteer his Courſe according to Wind and Weather, and that there was a great difference between ſuch Perſonal Indulgences as the King had granted in the Caſe to his Popiſh Subjects, and any ſuch Publick exerciſe of their Superſtitions as the word* Toleration *doth import.* And ſo he giveth Judgment, *that* Abbot *was only the reputed Author of this Baſtard Letter, and not the natural Parent of it.*

In the various Editions of this *Letter*, I have obſerv'd no *date* to it: and it is in that Book of Mr. *Prynne* before his mention of the *general* or *private* Articles, and before the *Match* was reſolv'd on by the King. And if notwithſtanding that *Letter*, the Archbiſhop was afterward Sworn to the *Articles*, his altering his judgment on grounds of Reaſon, was both commendable, and *exemplary:* and worthy of that mutual *Confidence* between the King and him and the other *Biſhops* in the *Councel*, and his Privy Councel in general; and which was ſuch, that in a lawful Matter the King could *ſtipulate* for their Obedience in the firſt *private* Article as was before mention'd.

A. Your having ſhew'd me out of the Copy of the Publick Inſtruments found by Mr. *Prynne* among my Lord *Cottington*'s Papers, what concerns the *Toleration*, hath given me much ſatisfaction in the truth of that Fact. For otherwiſe what a late Book writ for *The King's Right in diſpenſing with the Penal Laws* directed me to in *Ruſhworth* of *The Declaration touching the Pardons, Suſpenſions, and Diſpenſations of the Roman-Catholicks, ſign'd by the Lord* Conway *and others*, Aug. the *7th.* A. 1623. would have left the Matter to me full of doubt and myſtery.

B. But I ſee by thoſe *Copies* of *Articles* found among the Papers of my Lord *Cottington*, the *Toleration* of *Papiſts* had been *reverâ* about a Fortnight before the *date* of that Paper *ſworn* to by all the Privy Councellors of King *James*. And tho King *Charles* the *Firſt* did fall as a *Martyr* for the Proteſtant Religion, and was a *Confeſſor* of it in *Spain*, as Archbiſhop *Laud* ſets forth in his *Star-Chamber* Speech, and as likewiſe the *Earl* of *Briſtol* ſhews in his Learned and Loyal *Apology*, Printed, *A.* 1657. (which if you have not read, is highly worth your moſt ſerious peruſal; and where having ſpoke of the Papal *Diſpenſation* for the *Marriage* on the *Articles* formerly *agreed* on in point of *Religion*, and of the Civil *Letters* that paſſed between that King, then *Prince*, and the *Pope*, he ſaid that *thoſe Letters were Publiſh'd and Tranſlated into ſeveral Languages* (referring there, I ſuppoſe, to the *Mercure Francois*) *which tho he could not ſay corruptly, yet ſtrained as much as might be to his diſadvantage, and that it is probable that the like Letters of Compliance may have been procured in the Treaty of the Match with* France, *wherein the Pope's Diſpenſation was likewiſe held neceſſary*) yet I ſhall tell you, that Mr. *Prynne* in *p.* 46, 47. after he had mention'd the *Oath* taken by the *Privy Councellors*, ſaith, *His Majeſty call'd an Aſſembly of Divines to Conſult with, what he ought to do for the diſcharge of his Conſcience in this regard, and their Reſolution was firſt that the Prince of* Wales *ſhould promiſe on his Oath to perform the Conditions, and that the King his Father ſhould do the like: Secondly, That the Promiſes of Marriage ſhould be preſently made,* &c. *but that the Conſummation of the Marriage ſhould not at all be executed till the Month of* May *in the following year* 1624. *to the end that they might experimentally ſee if the aforeſaid Conditions required by his Holineſs ſhould be faithfully accompliſh'd,* &c. *As to the firſt, the Prince of* Wales *took an Oath to His Majeſty to obſerve the foreſaid Conditions, and ſign'd them with his Hand, and he likewiſe ſwore and ſign'd this by way of Over-plus, to permit at all times, that Any ſhould freely propoſe to him the Arguments of the Catholick-Religion without giving any impediment, and that he would never directly nor indirectly permit any to ſpeak to the Infanta againſt the ſame.*

But I ſhall here *en paſſant* obſerve to you out of the *general* Articles, namely that in the 16th *Article* (notwithſtanding my Lord *Coke*'s Opinion before-mention'd, that a *new* Oath cannot be introduced nor an *old* one *alter'd* but by *Act* of *Parliament*) there is a *new* Oath of fealty agreed to by the King to be tender'd both to *Foreigners* and *Subjects* of *England* who were to ſerve the *Infanta*, and care taken *that no Clauſe or word therein ſhall contradict the Roman Religion, or Conſciences of the Roman-Catholicks:* and that by the 24th *Article* for *the Security that every thing that was agreed to, ſhould be fulfill'd, the King and Prince were to be bound by Oath, that all the Privy Councellors ſhould ſign the Agreement,* And I need not tell you that their being *ſworn* to the *private* Articles was a new Oath.

A. Was nothing of the *King*'s mind about the *Suſpending ALL* the *Penal* Laws, both the *diſabling* ones and *others* againſt the Papiſts, notify'd to his *Privy Councel* before the *year* 1623?

B. Mr. *Prynne* there in *p.* 30. ſaith, that *for the haſtening the Pope's Diſpenſation for the Match, King* James (*as the French Mercure,* Tom. 9. *records it, and as he had CREDIBLY been inform'd of from others*) *aſſembling his Privy Councel together,* Febr. 25. 1622. *made a long Oration to them* (*which he recites at large*) *the ſum whereof was this, That the Roman-Catholicks in* England *had ſuſtain'd great and intolerable ſurcharges impoſed on their Goods, Bodies, Conſciences during Queen* Elizabeth's *Reign, of which*

they hoped to be relieved in his, &c. *That now he had maturely conſider'd the Penury and Calamities of the Roman-Catholicks who were in the number of his faithful Subjects, and was reſolv'd to relieve them, and therefore did from thenceforth take all his Roman-Catholick Subjects into his Protection, permitting them the Liberty and entire Exerciſe of their Religion*, &c. *without any Inquiſition, Proceſs, or Moleſtation from that day forward; and likewiſe will and ordain, that they ſhall be reſtored to all their Eſtates, Lands, Fees and Seignories, and re-eſtabliſh'd in them: Commanding all his Magiſtrates, Juſtices, and other Officers whatſoever in this behalf to hold their hands, and for what Cauſe ſoever it be, not to attempt hereafter to grieve or moleſt the ſaid Catholicks, neither in publick nor private in the liberty of the exerciſe of their Religion, upon pain of being reputed Guilty of High Treaſon, and Diſturbers of the Kingdoms peace and repoſe: this being his will and definitive Sentence.*

A. But ſtill I cannot forbear wondring about what Conſiderations made our *Divines*, and our Great *Champions* of the *Church* of *England-Proteſtancy* in the *State* as well as *Church*, afterward thus inclinable to act their Parts about *Toleration*, as Mr. *Prynne* hath mention'd.

B. They had cauſe enough to apprehend that the *Hierarchy* of *England* could not be ſupported without the *Monarchy*, and that by reaſon of the various growth of the Potency of *foreign* Princes and States, and of *inteſtine* Factions, the *Monarchy* could not be then ſufficiently ſecure without a *foreign* Alliance by inter-marriage; and that where ſuch Alliance was to be with the Families of *Roman-Catholick* Princes, there could be no expectation of the Pope's *relaxing* his Laws by *diſpenſing*, without our Princes doing ſomething of that kind as to theirs.

I might here obſerve to you, that we are told in *The Regal Apology* (that the *Oxford-Antiquities* mention'd to have been writ by Dr. *Bate*) that *A particular Toleration had a former Preſident even in Queen* Elizabeth *in thoſe Articles of Marriage which were conſented to with the Duke of* Anjou: *and if it were true that an Univerſal Toleration was agreed on by King* James, *it was* intuitu majoris boni. *The Palatinate was to be reſtored again, and the Proteſtants of* Germany *to be re-enſtated in their Poſſeſſions on that Condition.*

But to *puniſh* being a kind of *Puniſhment*, and it being *irreligious* to puniſh Men for *Religion*, and the higheſt *tide* of Anger being naturally ſucceeded by the loweſt *ebbe* of it, and the thoughts of rigorous Severity in *Princes* toward their *Subjects* being like ſuch in the *Head* toward the *Members* of the ſame Body, and King *James* having found that the general abhorrence of the *Gun-Powder-Treaſon* had blown up the credit of thoſe *fiery* Doctrines that produced it, and he being then within *Proſpect* of his end and being unwilling that the *Sun* of his Life *ſhould go down in his wrath*, and finding, as appears by his long *Proclamation* of four *ſheets* of Paper, declaring his Pleaſure concerning the *Diſſolving* of the *Parliament*, A. 16.. that they were not the *Papiſts* who made his later breath ſo uneaſie to him, and he being of opinion that the *reaſon* of the ſevere Laws was much *abated*, it may abate of our wonder that in that Conjuncture he put a Period to their Execution.

Mr. *Prynne* for this purpoſe in *p.* 14. of that Book Prints a *Letter* of the Lord Keeper *Williams* to the *Judges* in the *year* following, to acquaint them that *His Majeſty having reſolv'd (out of deep Reaſons of State, and in expectation of like Correſpondence from foreign Princes to the Profeſſors of our Religion) to grant ſome Grace and Conveniency to the impriſon'd Papiſts of this Kingdom; had Commanded him to paſs ſome Writs under the Broad Seal*

for

for that purpoſe, and that he had accordingly done ſo; and tells them, that *'tis His Majeſty's Pleaſure that they ſhall make no niceneſs or difficulty to extend that his Princely favour to all Papiſts impriſon'd for any Church Recuſancy whatſoever, or refuſing the Oath of Supremacy, or hearing of Maſs, or any other point of Recuſancy which doth touch or concern Religion only, and not matters of State, which ſhall appear to you to be totally Civil and Political.*

A. You lately mention'd to me that the *Earl* of *Briſtol* hinted it that there was afterward ſomewhat of Compliance with the *Pope* in the Match with *France* of that nature, as was in the *Spaniſh*. What account doth Mr. *Prynne* give of that?

B. He tells you there, *p.* 69. that *the French Match was ſoon Concluded in the life of King* James, *the Articles concerning Religion being the ſame almoſt* Verbatim *with thoſe formerly agreed on in the Spaniſh Treaty.* And he there refers to Rot. Tractationis & Ratificationis Matrimonii inter Dom. Carolum Regem & Dom. Henret. Mariam Sororem Regis Franc. 1° Car. in the *Rolls*: and then in *p.* 71. ſaith, *Beſides theſe general Articles of the Match, theſe particular ones were concluded and agreed on in favour of the Roman-Catholicks, the ſame in Subſtance with thoſe of* Spain, and where he ſaith the *Second* is to this effect, *that the Engliſh Catholicks ſhould be no more ſearched after* (or moleſted) *for their Religion.*

But Mr. *Prynne* there particularly ſets down only *three* ſhort *Articles*, and thoſe compriſed in about ſix lines: and the words [or moleſted] in the ſecond *Article* are *Printed* in a *different* Character from the others, as if he thereby intended them as his own Explication of the word *ſearched*.

A. You juſt now mention'd King *James* his having in the *year* 1622. order'd all the *Popiſh* Recuſants who were in Priſon on the account of their Religion to be ſet at liberty: and you told me how he *tacitly* diſpens'd with the *Diſability* that Popiſh *Phyſicians* and *Lawyers* had incurr'd by *Act* of *Parliament*. Was that all the *favour* he ſhew'd Roman-Catholicks?

B. No: He allow'd them to make a very Conſiderable *figure* in the *Government*, as you may find if you conſult the *Journals* of *Parliament*, as referr'd to by Mr. *Prynne*, p. 66. & *Seq.* of that *Book*. For he there mentions, that in the *year* 1624. *The Commons ſent a Petition to the Lords, deſiring their Concurrence with them in preſenting it to His Majeſty, for removing Popiſh Recuſants, and thoſe whoſe Wives were Papiſts, from Offices of Truſt, which by Law they were DISABLED to execute, which the Lords took into their Conſideration*, and which Mr. *Prynne* ſaith, *was enter'd in their Journal in this manner*, Die Jovis viz. Viceſſimo die Maii 1624. *The Lord Archbiſhop of* Canterbury *reported, that at the meeting this Day with the Commons, they Preſented an humble Petition to the King, deſiring this Houſe to joyn therein with them. The which Petition was read* in hæc verba, &c.

In ſhort, the *Commons* in their *Petition* take notice of the *Growth* of the *Number* of *Popiſh Recuſants in this Kingdom, and of their inſolency in all the Parts thereof, and that many of them, contrary to the Laws, were got into Offices and Places of Government and Authority under the King*: And the *Prayer* of the Petition is, *That the Lords and Gentlemen there undernamed, may be removed from all His Majeſty's Commiſſions of great Charge and Truſt, Commiſſions of Lieutenancy, Oyer and Terminer, and of the Peace, and from all other Offices and Places of Truſt.* And they in their firſt *Schedule* there name 11 *Lords* and 18 *Knights*.

And in their *ſecond* they name many *Perſons* of *Quality* who were in *Places* of *Charge* and *Truſt* in their ſeveral *Counties*, and had *marry'd* Popiſh Wives, and whoſe *Children* and *Servants* were bred up to Popery.

A. Doth any *Act* of *Parliament* diſable a man from bearing *Office* becauſe his Wife is a Papiſt, or becauſe his Children or Servants are bred up to be Papiſts?

B. Yes, the *Act* of the Third of King *James* the Firſt, *cap.* 5. doth it, as you will ſee if you conſult it; for 'tis there Enacted, That **no Popiſh Recuſant Convict, nor any having a Wife being a Popiſh Recuſant Convict, ſhall at any time after this Seſſion of Parliament, or any Popiſh Recuſant hereafter to be Convict, or having a Wife which hereafter ſhall be a Recuſant Convict, at any time after his or her Conviction, ſhall exerciſe any publick Office or Charge in the Common-wealth, but ſhall be utterly DISABLED to exerciſe the ſame by himſelf or his Deputy; except ſuch Husband himſelf and his Children which ſhall be above the age of Nine years abiding with him, and his Servants in Houſhold ſhall once every Month in the leaſt, repair to ſome Church uſual for Divine Service, and there hear Divine Service, and the ſaid Husband, and ſuch his Children and Servants as are of meet Age receive the Sacrament of the Lord's Supper, and do bring up his ſaid Children in true Religion.**

A. Now have you ſet me a *longing* to know what the *Houſe* of *Lords* did in the Caſe of that *Petition* about *removing* thoſe *diſabled* Perſons from *ſerving* the *King* in thoſe great *Stations*. And ſince the Judgment of Parliament was always had in ſuch great veneration, I think if the reſult of the *deſire* of the *Houſe* of *Commons* was that the Lords had *joyn'd* with them in the *Petition*, and had urged that the King could not *diſpenſe* with that *Act* of *Parliament* and Pardon *Diſability*, it may make a notable *Preſident* in the *Caſe* we have been diſcuſſing.

B. You will find that the *Commons* urged nothing to the prejudice of *Prerogative* in the *Prayer* of their *Petition*. Their *ſtyle* there was, **We humbly beſeech your Majeſty graciouſly to vouchſafe that the ſaid Lords and Gentlemen here under-named for this important Reaſon, and for the greater Safety of your Majeſty and of your Realm, may be removed from all your Majeſty's Commiſſions of great Charge and Truſt, Commiſſions of Lieutenancy,** &c. And the *important* reaſon did refer to the *great Countenance hereby given to Popery, the great grief and offence to all his beſt affected and true loving Subjects by putting the Power of Arms into ſuch mens hands as by former Acts of His Majeſty's Councel are adjudged Perſons juſtly to be ſuſpected*, &c.

But to let you ſee what the *Houſe* of *Lords* did hereupon, Mr. *Prynne* tells you, *p.* 69. *That this Petition being read, the Houſe did defer the Debate thereof at this time, for that the day was far ſpent. And anſwer was given to the Commons (who attended for the ſame in the Painted Chamber) that the Lords will ſend them an Anſwer of this Petition, hereafter when they are reſolv'd thereof.* Whereupon Mr. *Prynne* concludes his *account* of this *Tranſaction* thus, *Whether any of theſe were diſplaced upon this Petition, I find not in any Memorials; it being certain ſome of them were not, but continued ſtill in theſe Offices of Truſt.*

A. How have you here *diſappointed* my *Curioſity* in making that *ferment* then in the Government about the *Diſability* of the *Papiſts* being *diſpens'd* with, thus ſilently to go off through the *Houſe* of *Lords* forbearing to joyn with the *Houſe* of *Commons* in their *Petition!*

B. I ſhall here afford your *Curioſity* a recompence by obſerving it to you with alluſion to ſome of the words of the Royal *Martyr* in his *Anſwer* to the 19 *Propoſitions*, *That the ancient, equal, happy, well poyſed, and never enough commended Conſtitution of the Government of this Kingdom having made this Nation ſo famous and happy to a great degree of Envy*, &c. *and the Lords being truſted with a Judicatory Power are an excellent Screen and Bank between the Prince and the People, to aſſiſt each againſt any Encroachment of the other*, &c. that the Wiſdom of that Houſe in acting as it hath done, in many *Conjunctures* hath put an end to many ferments accidentally occaſion'd by others miſtakes about *Prerogative*, and whereby that *auguſt* Aſſembly did ſometimes *Cunctando reſtituere rem*, and by its forbearing out of *tenderneſs* for *Prerogative* to give judgment about it, hath often to the Satisfaction both of the *Prince* and *People*, left the *Regal* Rights in their ancient quiet Eſtate.

I ſhall for this purpoſe obſerve to you, that I once reading to the late *Earl* of *Angleſy* when he was Lord *Privy Seal*, what I had in a *Manuſcript* of mine ſet down, as the *Fact* of what had paſſed between the late *King* and the *Houſe* of *Commons* concerning his *Declaration of Indulgence* on *March* the 15th, 1671. and the *Penal* Laws being thereby *ſuſpended* (and the *ſuſpenſion* of *which* the *Commons* then urged could not be but by *Act* of *Parliament*, and whereupon they *apply'd* to the *King* for the *Vacating* that *Declaration*) his Lordſhip did *dictate* to me in order to my *Compleating* the *ſtate* of that *Fact*, and which I writ from his Mouth, as followeth, *viz.* *But it is to be obſerv'd upon this whole Tranſaction between the King and the Houſe of Commons, that the Lords had no hand in the Addreſs to the King about this great Point; altho it be uncontroverted that the Lords are the only Judicatory that can determine any controverted Point without an Act of Parliament, and either the King or the Commons might in a particular Caſe have had this Point brought by Appeal to the Lords, if they had pleas'd, and conſequently might have effected the judicial deciſion of the ſame.*

A. In your *State* of that part of the *Fact* that concern'd the *Commons*, did they Addreſs againſt the *Diſpenſing* with *Acts* of *Parliament*?

B. No, but only againſt the *Suſpending* them, which are things of a different Nature. The ſame *Houſe* of *Commons* by having *July* the 10th, 1663. reſolved, *That His Majeſty be humbly deſired to iſſue forth his Proclamation for the punctual and effectual Execution and Obſervance of the Act of Navigation without any Diſpenſation whatſoever, whereby the Act may be in the leaſt violated, and to recal ſuch Diſpenſations as are already granted*, &c. did *virtually* ſhew a Deference to His Majeſty's *right* of *Diſpenſing*. Nay, let me tell you, that the very many *Acts* of *Parliaments* which *expreſly* provide againſt the Crown's *diſpenſing* by *Non-obſtante* in ſome *particular* Caſes, may all be cited as *Preſidents* or *Judgments* of *Parliaments* for the propping up the *Diſpenſative* Power, and of Parliaments having *admitted* that *Power* in our Kings, the exerciſe of which they provide againſt and deſire to take away in ſuch particular Caſes.

But by referring to the *Fact* of the entercourſe between the late *King* and the *Houſe* of *Commons* about the *ſuſpending* the Penal Laws, I have took occaſion to point out to you the *Wiſdom* of the *Government* in *then* paſſing that affair over without a *judicial* deciſion. And I can give you an inſtance of the *Prudential* meaſures formerly obſerv'd by Perſons who made a great figure in the Adminiſtration of the *Eccleſiaſtical* Government of the *Church* of *England*, and who at the *Conſecration* of Biſhop *Manwaring* when on the uſual Proceſs at Conſecrations to call all Perſons to appear to ſhew cauſe why the Elect ſhould not be Confirm'd, ſome then appear'd & objected againſt

 him,

him, that upon his being *Impeached* 3° *Car.* 1. by the *Commons*, the *Lords* had given *Judgment* againſt him to *diſable* him from all *Preferment* in the *Church*; forbore to conſider the *merits* of the *Exception*, and throwing them off by a *Pretence* of their being *defective* in ſome *Formalities* of Law, went on in the *Confirmation.*

And which is more, I can tell you that long afterward, *viz.* A. 1640. the *Lords* highly reſenting both the *Pardon* and *Biſhoprick* he had obtain'd, and calling to mind the *Sentence* they had pronounced againſt him, did on the 18th of *April* that year, *refer* the *Conſideration* thereof to their Grand *Committee* for *Privileges*, *it being alſo moved, that what can be alledged on the Lord Biſhop of St.* David's *part, either by Pardon, Licence or otherwiſe, may be produced and ſeen at the Sitting of the Lords Committees for their full and clear underſtanding, and better expedition in the buſineſs*: and on the 21*ſt* of *April* that *year*, *order'd*, *that on the following* Monday, *the Records be brought into the Houſe, that the Houſe might determine the Cauſe*, and on the 27*th* of *April* following, *order'd the Cauſe to be heard the next day*, and upon which day ſome ſuch *fatal* Sentence being *expected* againſt the *Biſhop*, as, *And his Biſhoprick let another man take*, by reaſon of his having been *judicially* diſabled; His Majeſty commanded that Biſhop not to Sit in Parliament, nor ſend any *Proxy* thither: and the *ferment* of the debate went off without any *Judgment* given by the *Lords* that might touch *Prerogative* in the Point.

And if in the *year* 1640. when the *air* of mens *fancies* was ſo much infected with the *Peſtilence* of *Faction*, ſo much *tenderneſs* was ſhewn to *Prerogative* (and that too in the Caſe of a *Criminal* whom the *Commons* had for ſo many years made the great object of their anger, as one whom they look'd on as a *Proditor* or Betrayer of his Country, and Betrayer of their *Properties*) the Loyal may well ſay *quid non ſperemus*, as to any future *ferment* that can riſe in Parliament, being allay'd without *Prejudice* to the Crown.

The *Journals* of Parliament in the Beginning of the Reign of King *Charles* the Firſt do tell us of the great ferment about the *Pardon* of Biſhop *Montague*, whom the *Commons* had *impeach'd* before the *Lords*, and who after the *Parliament* was *Prorogued* to the 4th *year* of the *reign* of that *Prince*, had obtain'd his *Pardon* in the time of the *Prorogation*, and that ſuch *Pardon* was by the Commons *queſtion'd*, and that ſuch *queſtioning* ſoon evaporated.

But according to that *Great* Saying of Sir *Harry Martin* in his *Speech* at a *Conference* between both Houſes (as you will find it in *Ruſhworth*) after he had mention'd the inconvenience of nice debates about *the Original, Latitude and Bounds of Sovereign Power*, viz. *I have ever been of opinion that it is then beſt with Sovereign Power when it is had in tacit veneration, and not when it is prophaned by Publick Hearings and Examinations*; you will find that it hath been the uſual Practice of our great Loyal *Patriots*, in many *Critical* Conjunctures of time to prevent the *popular* Criticiſing on Controverted Points of Prerogative, and to provide for the eaſe both of Prince and People by giving no other *rule* in the *Cauſe* then the putting it off *in longiſſimum diem.*

A. I ſuppoſe that excellent Political remark of Sir *Harry Martin*'s was ſo made by him in the *Conjuncture* of the *Petition* of *Right*. I have read of the great *ferment* the *Petition* of *Right* made in the beginning of the *Reign* of the *Royal* Martyr: and I ſhall be glad to know if the *diſpenſing* with the *Penal* Laws, and particularly ſuch as are incluſive of *diſability* made any part of the fermentation.

B. No doubt if the *Diſpenſative* Power of the Crown as to any *Penal* religionary Laws, had then appear'd any conſiderable *gravamen* to any of the *three* Eſtates, they would then have cry'd out of it: But which they did not. Yet I ſhall tell you that they had a fair occaſion then given them to do it if they had thought it *tanti*. For in the *firſt* year of his Reign there was a *ferment* in *Parliament* about the *Penal* Laws againſt the *Papiſts*, and particularly the *diſabling* ones, but which ſoon went off (as I may ſay) by *inſenſible* Perſpiration.

It ſeems that Mr. *Prynne* in *p.* 74. and 77. ſaith *both Houſes that year having preſented a Petition to that Prince wherein they took notice that his Majeſty had in his Princely Wiſdom taken order that none of his natural born Subjects not profeſſing the true Religion and by Law eſtabliſh'd, ſhall be admitted into the Service of his Royal Conſort, and having further deſired that his Majeſty would be pleas'd to remove from all Places of Authority all ſuch Perſons, as are either Popiſh Recuſants, or according to direction of former Acts of State to be juſtly ſuſpected*, and *that his Majeſty* ſaid *he would give order for it, yet that that Parliament being unhappily diſſolv'd in diſcontent, his Majeſty* thought not fit to ſhew ſuch *ſeverity* to *Recuſants* as he intended. And in *p.* 76. Mr. *Prynne* had mentioned that Sir *John Winter*, Mr. *Walter Mountague*, Sir *Maurice Drummond*, and *other Papiſts, were admitted in her Majeſty's Service.* But by what appears from Mr. *Prynne* in *p.* 80. in the following *Parliament* in the *Second* year of that *King, the Houſe of Commons took divers Examinations concerning Recuſants that were in Office, and at laſt agreed on a Petition againſt Recuſants in Office, and to preſent their Names therewith to the King to the end they might be removed:* and He then ſaith, that *Martis* 6. *Junii* 2. *Car. Regis. The Petition againſt Recuſants in Authority was engroſſed, read and allow'd to be preſented to his Majeſty, and this to be done by the Privy-Councel of the Houſe, and Sir* John Fullerton, *which was done accordingly: but with what real ſucceſs, I can give no exact account.*

But that the *diſabling* and other *Laws* againſt the *Papiſts* had been *diſpens'd* with by the *Royal Martyr* as well as his *Father*, any one will conclude who reads what there followeth, *viz. In this Parliament theſe enſuing Articles againſt Popiſh Recuſants were Conſulted of in the Houſe of Commons, with an Intent to draw them into an Act*; *and of which* the 9th is, *No Recuſant to bear Office of Juſtice of Peace or otherwiſe, or any man whoſe Wife ſhall be a Recuſant, or practice Law, Common, or Civil, or Phyſick, nor have Command in War*, &c. And I ſhould firſt have told you that the *Third* was, **A New Oath with more Additions to be taken concerning the Supremacy.**

A. Good God! *A new Oath with more Additions about the Supremacy!*

B. You may ſuppoſe it would have been ſeemingly a *New* Oath by that *Parliament*'s approving all the Authentick *Regal* Interpretations of the *old* one, as Queen *Elizabeth*'s Interpretation was *approved* by her *Parliament*.

But you may here obſerve, that tho the *Diſabling* and other *Penal* Laws were by this Pious Prince tacitly and often *diſpens'd* with, and the *time* of the doing of it caus'd ſome temporary *ferments* to ariſe in the Minds of his Subjects in *Parliament*, yet their animoſities have ſoon *tacitly* evaporated, and the *Regal* Power of *Diſpenſing* then came to no *queſtion*. The *Puritan* Diſſenters and *ſcruplers* of *Ceremonies*, knew they wanted the benefit of that *Power* as well as the *Papiſts*: and the *exerciſe* of that *Power* was in the *Petition* of both *Houſes* before mention'd *implored* as to the diſabled or *ſilenced* Miniſters. And therefore you will not wonder at it when I tell you

that

that during all the great Patriotly *efforts* that were made for the removing all *Grievances* by the *Petition* of *Right*, there was no offence taken at the Right of the *Diſpenſative* Power.

A. I thank you for that obſervation.

B. The thought is too *obvious* to deſerve thanks: and I aſſure you it is a kind of *Proverbial* Saying in the *Canon* Law, that *Diſpenſationum modus nulli Sapientum diſplicuit.*

But even in the *Conjuncture* of the *Petition of Right*, to ſhew you that the *Diſpenſative* Power did not in the leaſt contribute to the *ferment*, I ſhall let you ſee out of *Ruſhworth* how Mr. *Glanvile* (who made ſo great a *figure* of a *Patriot* then in *Parliament*) did with the greateſt popular applauſe appear as an *Aſſertor* of that Power, and when in his *Speech* in a full *Committee* of both *Houſes* (*May* 23. *A.* 1628.) he *inter alia* ſaid, *There is a Truſt inſeparably repoſed in the Perſons of the Kings of* England; *but that Truſt is regulated by Law: For example, when Statutes are made to Prohibit things not* mala in ſe, *but only* mala quia Prohibita, *under certain Forfeitures and Penalties to accrue to the King and to the Informers that ſhall ſue for the breach of them, the Commons muſt and ever will acknowledge a Regal and Soveraign Prerogative in the King touching ſuch Statutes, that it is in his Majeſty's abſolute and undoubted Power to grant Diſpenſations to particular Perſons, with the Clauſes of* Non-obſtante *to do as they might have done before thoſe Statutes, wherein his Majeſty conferring Grace and Favour upon ſome, doth not do wrong to others. But there is a difference between thoſe Statutes and the Laws and Statutes whereon the Petition is grounded. By thoſe Statutes the Subject hath no intereſt in the Penalties which are all the fruit ſuch Statutes can produce, until by Sute or Information he become entituled to the particular Forfeitures; whereas the Laws and Statutes mention'd in our Petition are of another Nature. There ſhall your Lordſhips find us to rely upon the good old Statute called* Magna Charta, *which declareth and confirmeth the ancient Common Laws of the Liberties of* England: and there he ſpeaks afterward of *other Statute Laws not inflicting Penalties upon Offenders* in malis prohibitis, *but Laws declarative or poſitive, conferring or confirming* ipſo facto *an inherent Right and Intereſt of liberty and freedom in the Subjects of this Realm, as their Birth-rights and Inheritances deſcendable to their Heirs and Poſterities, the Statutes incorporate into the Body of the Common Law; over which (with reverence be it ſpoken) there is no Truſt repoſed in the King's Soveraign Power or Prerogative Royal to enable him to diſpenſe with them, or to take from his Subjects the Birthright which they have in their Liberties, by virtue of the Common Law.*

So then according to the ſenſe of this *loyal* Patriot, if the King ſhall by his Prerogative *diſpenſe* with the *Diſabilities* or *Premunires* or other *Penalties* incurr'd by *Popiſh* Recuſants purſuant to any *Statutes*; as for example, thoſe of Queen *Elizabeth* or King *James*, and even that of 3° *Jac.* c. 5. **whereby Convicted Recuſants are diſabled from Military Offices, and Offices in the Navy, and in the Law, and from the Practice of Phyſick, and any publick Office and Charge in the Commonwealth**, or the *Teſt-Act* 25° *Car.* 2. No queſtion is to be made of the King's *abſolute and undoubted Power of diſpenſing with particular perſons in ſuch a Caſe.*

And during the *ferment* about *the Laws and Statutes* whereon the *Petition of Right* was founded (and which *were of another Nature*, as Mr. *Glanvile*'s words are) you will not forget that there was a *tenderneſs* for *Prerogative* avow'd by *both Houſes*, while you remember thoſe words of the *Royal Martyr* in his *Speech* at the *Prorogation* of the *Parliament* the 20th of *October*, A. 1628. viz. *That the Profeſſion of both Houſes at the time of hammering*

mering the Petition of Right was no way to entrench upon his Prerogative; and their saying *that they had neither intention nor power to hurt it*, &c.

You may too call to mind that as during the *ferment* that the *suspending* the *Penal* Laws by His late Majesty's *Declaration* of *Indulgence*, his Power of *Dispensing* in them came not in *question*, so the *heat* about his *Prerogative* to *SUSPEND* them was soon over.

The *Opinion* of that *loyal* Patriot and *learned* and upright *Justitiary* Sir *William Ellis* deliver'd in his *Argument* about *Thomas* and *Sorrell*'s Case I told you of, namely that *the King may SUSPEND an Act of Parliament till next Session* (which was a flight beyond what was moved for or adjudged in the late Case of *Godden* and *Hales*) did never meet with any angry reflection (that I have heard of) from any Person either of the People *diffusive* or *representative*, tho yet that *Argument* of his containing such *Opinion* was both after the *Votes* of the *House* of *Commons* about the *illegality* of the *suspending* of *Penal* Laws in Matters Ecclesiastical otherwise then by *Act* of *Parliament*, and after the *Act* for the *Test*.

And how near the Prerogative of *Dispensing* as allow'd by my Lord Chief Justice *Vaughan* in his *Argument* in *Thomas* and *Sorrell*'s Case, (and who argued after Sir *W. Ellis*) came up to *SUSPENDING*, you may see there by what he saith, *p.* 347. *Where the King can dispense with particular Persons, he is not confined to number or place, but may License, as many, and in such Places as he thinks fit.*

But further to shew you to how quiet and temperate a State that *ferment* of the Prince's *suspending* all the Religionary *Penal* Laws without an *Act* of *Parliament* was grown, I shall let you see that several *years* after the *late* King's *Declaration of Indulgence* and the *Act* for the *Test*, the late *Earl* of *Shaftsbury* appear'd in Print as owning the *legality* of the King's *Prerogative* in that kind, and without his Lordship's being in the least censured for it by any of that numerous Party he was then the Head of.

And here I am to tell you, that in a Book call'd *A Letter from a Person of Quality to his Friend in the Country*, Printed in the *year* 1675. the *Earl* of *Shaftsbury* is by Mr. *Marvell* the supposed *Author* of the *Book*, introduced as owning that *the Power of the King's Supremacy* (meaning in Matters Ecclesiastical) *was of another Nature then that he had in Civils, and had been exercised without exception in this very Case* (*i. e.* as in the Declaration of Indulgence) *by his Father, Grandfather, and Queen* Elizabeth, *under the Great Seal to foreign Protestants become Subjects of* England, &c.

A. Did the *Earl* of *Shaftsbury* then in the *year* 1675. own the *Prerogative* of *suspending* Penal Laws in Matters *Ecclesiastical* when the *King* had long before *quitted* it, and when his Lordship was Embarqued with those Men to whom nothing could once seem more unpopular then the owning of any such *Prerogative*?

B. I refer you to the *Book* it self, and where you will see that that Great *Statesman* did then assert the *extent* of *Prerogative* in that Point, with as much strength of *Wit* and *Reason*, as if he had been then *sitting* at the *Helm of State*: and where he further shews *the Necessity of a standing Supreme executive Power to mitigate or wholy to SUSPEND the execution of any Penal Laws*, &c. But I shall best entertain you with his Lordship's own words as so great a *Narrator* as Mr. *Marvell* relates them, and who (as he saith) telling his Lordship that *the Declaration of Indulgence assumed a Power to repeal and SUSPEND all our Laws, his Lordship replyed, that he wonder'd at his Objection, there being not one of these in the Case. For the King assumed no Power of repealing Laws, or suspending them contrary to the will of his Parliament, or People; and not to argue with me at that time the Power of*

the King's Supremacy, which was of another Nature then that he had in Civils, and had been exerciſed without exception in this very Caſe by his Father, Grandfather, and Queen Elizabeth, *under the Great Seal to foreign Proteſtants become Subjects of* England, *nor to inſtance in the SUSPENDING the execution of the two Acts of Navigation, and Trade during both this and the laſt* Dutch *War, in the ſame words and upon the ſame neceſſity, and as yet without clamour that ever we heard. But to paſs by all that, this is certain, a Government could not be ſuppoſed whether Monarchical, or other of any ſort, without a ſtanding Supreme executive Power fully enabled to mitigate, or WHOLLY to SUSPEND the execution of any Penal Law in the intervals of the Legiſlative Power: which when aſſembled there was no doubt, but wherever there lies a Negative in paſſing of a Law, there the Addreſs or ſenſe known of either of them to the Contrary (as for inſtance of either of our two Houſes of Parliament in* England) *ought to determine that Indulgence, and reſtore the Law to its full execution. For without this the Laws were to no purpoſe made, if the Prince could annul them at pleaſure, and ſo on the other hand without a Power always in being of diſpenſing on occaſion, was to ſuppoſe a Conſtitution extremely imperfect, and impracticable, and to Cure thoſe with a Legiſlative Power always in being, is when conſider'd no other then a perfect Tyranny.*

A. I find that his *Lordſhip* doth not in the leaſt *diſtinguiſh* between the Right of Prerogative in *ſuſpending* the *Diſabling* or *incapacitating* Penal Laws, and others. And he by giving the Power of *ſuſpending* all the *Penal* Laws to the Prince *during the Intervals of Parliament*, and till an *Addreſs* ſhould be thence made to the Prince to *revoke* ſuch *ſuſpenſion*, hath given his Prince this Power in effect *during* life. For 'tis obvious to conſider by how many accidents a *ſuſpenſion* of Penal Laws *revocable* on an *Addreſs* from the Parliament, may happen to be not ſo *revoked.*

B. You ſay right. The King may thus according to his Lordſhip's *Opinion* ſuſpend all Penal *Diſabilities* as well as other *Penalties* incurr'd by *Acts* of *Parliament*, and particularly by the *Teſt-Act* of 25° *Car.* 2. and hereby to the Great figure he made in the framing of that *Act*, any who are diſpleas'd with the *Act*, may apply the *Una eademque manus*, &c.

A. But I ſuppoſe his Lordſhip there has nothing that may favour the *repealing* of the *Teſt*, or any of the *Penal* Laws againſt the *Papiſts.*

B. None would expect from him any thing to be moved for the repealing of the *Teſt*; however he allow'd *Prerogative* to *ſuſpend* it. But at that time that all People of narrow Souls and ignoble Thoughts were with ſo much clamour hunting down all *Roman-Catholicks* without *diſtinction*, and when the moſt devout among them by being (as it were) *ad beſtias damnati* and devoured by *Informers*, appear'd as a *ſpectacle* of delight to many inhumane Proteſtants, his Lordſhip's *humanity* was ſo great as to incline him in *p.* 6. there to give them ſomewhat like a *Quietus* from all *Pecuniary* Laws. And the truth is when I conſider how little *Wool* the *fleecing* of *Roman Catholicks* and *Quakers* or any *Heterodox* Religionaries at home or abroad hath brought to the Exchequer of any *Prince* or *State*, and only to *Informers*, and that the Conſciences of peaceable Men have been burden'd by Men of no Conſcience, and by the *turba gravis paci* who are indeed burthens of the Earth, I tremble to think what occaſion may have been taken by Male-contents to ſay in their Hearts as to any ſuch Prince or State, according to thoſe words of the Pſalmiſt, *Thou ſelleſt thy People for nought, and doſt not encreaſe thy Wealth by their Price*, or *and takeſt no Money for them.* I ſhall at ſome other time of our meeting give you ſome account out of the *Records* of the *Exchequer* of the inconſiderable *Sums* of *Money*,

that

that have for ſeveral years been brought to it by the ſevere Proſecutions of *Roman-Catholicks* and *Quakers*.

But there is another thing very well worth your reading in that *Book*, and which is the more proper for our Conſideration as ſuiting ſome great Points we have been diſcourſing that concern our Oath, and that is this; His *late* Majeſty's *Miniſters* in that year 1675. having brought in a *Bill* in Parliament for a *TEST* extending to *Proteſtants* (and which as the *Book* ſaith, was call'd by one of His Majeſty's Miniſters, *A moderate Security to the Church and Crown*) you will there in *p.* 15. ſee it mentioned how as to the *Aſſertory* Parts of the *Oath* in that *Teſt*, *It was worthy the Conſideration of the Biſhops whether Aſſertory Oaths which were properly appointed to give Teſtimony of a Matter of Fact whereof a man is capable to be fully aſſured by the evidence of his Senſes be lawfully to be made uſe of to confirm or invalidate Doctrinal Propoſitions, and whether that Legiſlative Power which impoſeth ſuch an Oath, doth not neceſſarily aſſume to it ſelf an Infallibility? And as for promiſſory Oaths, it was deſired that thoſe learned Prelates would conſider the Opinion of* Grotius De Jure Belli & Pacis, *l.* 2. *c.* 13. *who ſeems to make it plain that thoſe kind of Oaths are forbidden by our Saviour Chriſt*, Matth. 5. 34, 37. *and whether it would not become the Fathers of the Church when they have well weigh'd that and other places of the New Teſtament, to be more tender in multiplying Oaths then hitherto the great Men of the Church have been?* It is there toward the end of the *page* mentioned how *ſome of the Lords deſired that it might be clearly known whether it were meant all for an Oath, or ſome of it a Declaration, and ſome an Oath? If the latter, then it was deſired it might be diſtinctly parted, and that the declaratory part ſhould be ſubſcribed by it ſelf and not ſworn. There was no ſmall pains taken by the Lord Keeper and the Biſhops to prove that it was brought in; the two firſt Parts were only a Declaration, and not an Oath: and tho it was reply'd, that to declare upon ones Oath, or to abhor upon ones Oath, is the ſame thing with, I do Swear, yet there was ſome difficulty to obtain the dividing of them, and that the declaratory part ſhould be only Subſcribed, and the reſt ſworn to.*

A. But have you mention'd theſe things, as if you would incline me to concur in opinion with that *Lord* as to the King's Power of *ſuſpending* the *Penalties* incurr'd by *Acts* of *Parliament*, and to agree with the Meaſures of ſome other *Lords* then about Oaths *aſſertory* and *promiſſory*, as referr'd to?

B. If I were of the ſame opinion about the King's Power in that Matter, as that *Lord* and Sir *William Ellis* were, I would however forbear troubling you with it at this time while we are conſidering the *Obligation* of our *Oath* of *Supremacy* in order to our aſſiſtance and defence of the Prehemínence of the *Diſpenſative* Power. And therefore I ſhall not in the leaſt *endeavour* to *incline* you now to imbibe the *perſwaſion* of any nice *Controverted* point of *Law* or *Theology*, and wherein there ſeems *probabilis cauſa litigandi*. And if when we are parted, you on your recollection of our Diſcourſe at this or our firſt meeting, ſhould have the leaſt trouble by calling to mind any thing I have occaſionally mention'd that is matter of *Controverſie*, you may with all my heart put it off with a temporary *tranſeat* from your thoughts.

But one of my aims in referring to that *Opinion* of his *Lordſhip* was, That knowing you to be much concern'd for the *eaſe* and *quiet* of your *Prince* and *Country*, I might *Conſole* you with an *Inſtance* of a great *ferment* about the *Regal* Power, ſuddenly going off: and as that Book too ſhew'd you that another did in the Government that was occaſion'd by the new *Teſt-Bill* then introduced.

And

And I must tell you that *another* of my *aims* in my pointing you to his Lordship's Observation of the *Suspensions* of the *Penal* Statutes in the late *Reigns*, was occasionally to direct you to a *tenderness* for the *Regal* Rights in general, and for the *undoubted* Right of the *Dispensative* Power in Particular. The same thing likewise hath been my *aim* in the several *Presidents* I have given you of the *Ecclesiastical* Power by Queen *Elizabeth*, King *James*, and King *Charles* the *First* exercised in *suspending* Penal Laws.

The expression of *tenderness* for the *Rights* of our *Princes* hath been much *used* by the loyal *Patriot'y* Writers in the late Reigns: And here *I* shall *à propos* apply it, as the *Resuscitatio*, Part. 1. p. 37. mentions it as used by my Lord *Bacon* in a *Speech* in the *House* of *Commons* in the Reign of King *James* the *First*, to the *Question* now before us in the *Reign* of King *James* the *Second*. His Lordships words are, *Since therefore we have a Prince of so excellent Wisdom and Moderation, of whose Authority we ought to be TENDER as he is likewise of our Liberty, let us enter into a true and indifferent Consideration how far forth the Case in question may touch his Authority, and how far forth our Liberty. And to speak clearly, in my opinion, it concerns his Authority much, and our Liberty nothing at all.*

That Expression concerning *tenderness* for the *Regal* Rights was very acceptable to the *House* of *Commons*, when his *late* Majesty in his *Letter* to them from *Bredagh*, *April* 14. 1660, thus made use of it, *viz. We have not the least doubt but you will be as TENDER in and jealous of any thing that may infringe our Honour and Authority, as of your own Liberty and Property, which is best preserv'd by preserving the other.*

Remember therefore that your *tenderness* for *Property* is best preserv'd by your *tenderness* for the Regal Authority: and if you would have your *thoughts* adorn'd by a constant *Idea* of true *English* Loyalty like a noble *Picture* retain'd there, let me direct you to a Saying, which like an *Original* drawn by a great Master, may be fit for you to *Copy* after, *viz.* that *Saying* of the Lord Keeper *Coventry* in a *Speech* in the *House* of *Lords*, viz. *Some would have the King's Prerogative rather tall then great; others* è contra. *But none can be truly loyal, but he that is a good Patriot, and none can be a good Patriot, but he that is truly loyal.*

Nor need it be further insinuated to you, that without your keeping up a *tenderness* for the *Regal* Rights, you cannot maintain your tenderness for *Oaths*. And here I must take occasion to tell you that one of my *aims* in entertaining you with the *Queries* relating to *Oaths* out of that *Book*, was to lay before your thoughts a *tenderness* as to *Oaths* in general, both in *keeping* the lawful ones you have taken, and in not *imposing* unlawful, doubtful, unnecessary, or *inexpedient* ones on others; and on such as our *Prince* considering the several Constitutions of their minds both as to firmness and infirmness, hath thought fit to exempt from taking such *strong Physick*.

Moreover if you will think that another of my *aims* was to mind you that the same *Queries* might have been as ingeniously and ingenuously put in the *year* 1673. before the passing of the *Test-Act*, as they were in debating the *Test-Bill* in the *year* 1675, I shall allow you so to do.

You may too (if you will) here *occasionally* consider how soon *God* in the course of his Providence doth sometimes turn the Tables, and make such who were lately so active in imposing on others *Oaths* that seem'd doubtful and oppressive to them, to be in danger of suffering by the like Impositions. Mr. *Burrough*'s a Pious Independent *Divine* (who lived in the late times) referring in his *Irenicum* to the Impositions and Persecution design'd by the *Presbyterians* against those of his Perswasion, saith there, *but*

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the Tables may turn one day, wherein the Sufferers ſhall have the greateſt Eaſe, and the Inflictlers the ſoreſt Burthen. But God forbid that their Brethren ſhould lay it upon them, tho it were put into their Power to do it. And you may take notice that the *Book* we before ſpoke of, owns the Activity of the *Roman-Catholick Lords* then in hindering that *Teſt*'s being brought on *Proteſtants*: the Conſideration whereof may (I think) juſtly incline all, who account it their Happineſs to have been freed from that deſign'd *Oath*, not to grudge at the favour that hath been extended by the *Dispenſative* Power to *particular* Roman-Catholicks excuſed from taking other Oaths: or at any *juſt* favour if ever *happening* to be afforded them by the Authentick *Interpretation* of what in the *Statute-Oaths* ſeems *doubtful* to them.

So tender was the Government in the time of *Edward* the *6th*, about the not making the *Conſciences* of the People uneaſie by *Oaths*, that you will find it in the *Reformation of the Eccleſiaſtical Laws* begun in *Harry* the 8*th*'s Reign, and carry'd on in his, that the *Magna nomina* who were employ'd to make a New Body of *Laws*, did in Compaſſion to the Conſciences of thoſe who took the uſual *Promiſſory* Oaths for the obſervance of the *Statutes* of *Univerſities*, Collegiate Churches, and ſuch like Societies and Corporations, order this *Clauſe* to be added to the *Oaths*, viz. *Hæc omnibus partibus ſervabo, quibus cum ſacrâ Scripturâ, cum legibus civilibus, & Eccleſiaſticis hujus Regni conſentient, & quantum vires meæ patientur.*

The School-men (ſaith one) *would be thought moſt tender and moſt curious in the point of Oaths. They mince them out ſo fine, that a whole Million of Oaths may ſtand* (*as ſome ſpeak of Angels*) *on the point of a ſharp needle.* I have therefore not wonder'd at it when I have ſeen men *ſtanding* on *this ſharp point* of *Oaths*, ſo often inconſiſtent with themſelves.

Notwithſtanding what I told you out of my Lord *Coke*, that an *Oath cannot be miniſtred to any unleſs the ſame be allow'd by the Common Law, or by ſome Act of Parliament. neither can any Oath allow'd by the Common Law or by Act of Parliament, be alter'd, but by Act of Parliament*; yet as you know that the *Houſe* of *Commons* in the 30th *year* of Queen *Elizabeth* deſiring *that no Oath or Subſcription might be tendred to any at their entrance into the Miniſtry, but ſuch as is expreſly preſcribed by the Statutes of this Realm, except the Oath againſt Corrupt entring*, did thereby however *approve* of the tendring of that Oath, ſo my Lord *Coke* likewiſe, *Inſt.* 3. c. 71. viz. *Of Simony* ſeems to *approve* of that *Oath*, in ſaying that *Simony is the more odious, becauſe it is accompany'd with Perjury, for the Preſentee*, &c. *is Sworn to commit no Simony, referring there to* Lynwood, and had before in that *Chapter* referr'd to *Canon* 40. 1 *Jacobi* 1603. *The Oath againſt Simony.*

You may too remember what I ſo lately told you of my Lord *Coke*'s having with ſome approbation, or fair reſpect mention'd the *Clergy's* Oath of *Canonical* obedience.

And I can tell you that I lately looking on the *Charter* of the *Corporation of Shipwrights*, granted by King *James* the Firſt in the Tenth year of his Reign, obſerved therein that *Thomas* Lord *Elleſmere* Lord Chancellor of *England*, Sir *Thomas Flemming* Lord Chief Juſtice of *England*, Sir *Edward Coke* Lord Chief Juſtice of the *Common-Pleas*, did purſuant to the *Statute* in the 19th *year* of *Henry* the 7th *allow and approve* under their *Hands* and *Seals* divers *Articles*, *Acts*, and *Ordinances* for *the better Order, Rule, and Government of the Art or Myſtery of Shipwrights* exhibited to them by the Corporation, and did moreover *ordain* the *form* of three new *Oaths* to be taken by the *Officers* and *Freemen* of that *Corporation*, and did *DISABLE* the Refuſers of ſuch *Oath* to be Members of the Corporation.

But I may here occaſionally by the way tell you what you will find in *Croke* 3d. Sir *Edward Coke* Sheriff of *Buckingham*'s *Caſe*, viz. That upon ſeveral *Exceptions* there mention'd as by him taken to the *Oath* tender'd to him as *Sheriff*, on the account of ſeveral *Additions* alledged by him to be in the *Oath* that were not in the *Ancient Oath in the Regiſter*, *and afterward Confirm'd and Appointed by the Statute of* 18 Edw. *the Third*; and all the *Judges* being *Conſulted* as to the allowance of the ſame, tho they allow'd of his *firſt* exception namely as to his *ſuppreſſing all Errors and Hereſies commonly call'd LOLLARIES, and being aſſiſtant to Commiſſaries and Ordinaries in Church-matters*, &c. and that that *Clauſe* was fit to be *omitted* out of the *Oath*, *becauſe it is appointed by Statutes that are repeal'd, and was intended againſt the Religion now Eſtabliſh'd*, yet as to his *ſecond Addition* complain'd of, the greater part of the *Judges* were of opinion *that an Oath in this Point may be well enjoyn'd by the King and Order of State without Parliament, and that it may well be impoſed on the Sheriff to take, being for the publick Benefit and Execution of the Laws.* And as to his Fourth *Addition* complain'd of, namely, *That he ſhould Cauſe the Statute of* Winton *and the Statutes againſt Rogues and Vagabonds to be put in execution, whereunto he excepted, becauſe the Statute of* Winton *was alter'd, and the Statutes againſt Rogues and Vagabonds are appointed to be executed by the Juſtices of the Peace, and not by the Sheriff:* to this the Judges ſaid, that *this Fourth Addition reſts on the former reaſon, that this Oath being appointed and continued divers years by direction of the State, altho without the expreſs Authority of any Statute Law, yet may he well be continued for the publick benefit in repreſſing ſuch Perſons*, &c.

A. What a terrible thing was it that that *Clauſe* about *ſuppreſſing Lollaries*, &c. ſhould continue in the *Oath* ſo long after the *Reformation*: and that Sir *Edward Coke* ſhould be the firſt Proteſtant *Sheriff* we have heard of whoſe Conſcience was ſo delicate as to refuſe to ſwallow that *poiſonous Clauſe*?

B. You may too as juſtly ſay what a *terrible* thing *is it* that ſo many Proteſtants who have formerly by the frequent ſwallowing the Poiſon of Contradictory *Oaths*, habituated themſelves to the quiet concocting of all Oaths (as the *King* of *Pontus* brought himſelf at laſt to digeſt all Poiſons) will yet be ſo ready to endeavour to compel the Conſciences of others to ſwallow ſuch *Oaths* that they believe or ſuſpect to be poiſonous; a thing that hath probably tended to make ſo many among us to *Nauſeate* the uſe of all *Oaths* as unlawful.

A. Whom do you mean by thoſe?

B. The *Quakers*. And here I ſhall freely tell you that Providence having permitted ſo numerous a *Sect* as that of the *Quakers* among us to *bear* their *Teſtimony* againſt the lawfulneſs of *Oaths* in general, I ſhall be well content if the event of *the bending the Crooked ſtick the contrary way* (as my Lord *Primate*'s Expreſſion was) may be an univerſal *tenderneſs* as to *Oaths*, as I juſt now deſcribed it; and the want of which hath (as I ſhew'd you at our laſt meeting) been ſo ſcandalous to our Country, and brought an *opprobrium* both on *Proteſtancy* and *Chriſtianity it ſelf.*

Alexander ab Alexandro, l. 5. tells us, that there was no *uſe* of *Oaths* among the *Phrygians*. And tho *Grotius* ſaith in his *De jure Belli & Pacis*, that *jure gentium teſti injurato non creditur*, yet it was by *Polybius* obſerv'd that in the better and ſimpler *Ages* of the World *Oaths* were ſeldom uſed in *Judicatures*. The *Athenians* would not ſuffer *Xenocrates* a Perſon of known Probity to take his Oath at the *Altar*, as a thing below his reputation. *Gellius*, l. 10. c. 15. ſaith, *Verba Prætoris ex edicto perpetuo*

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de Flamine Dialı & de Sacerdote Veſtæ adſcripſi. Sacerdotem Veſtalem, & Flaminem Dialem in omni meâ juriſdictione jurare non cogam. And *Livy* hath it, that *among the* Romans *the* Flamen Dialis *was not in any caſe allow'd to ſwear, leaſt at any time he ſhould forſwear, which in him was held as the moſt hainous thing.* I have too ſomewhere read *Plutarch* cited for juſtifying to this purpoſe the reaſonableneſs of their not ſwearing; *for that an Oath was a kind of torture to a free man: and that it was abſurd not to credit their words: and for that an Oath draws after it an Imprecation or Curſe in Caſe they ſhould be forſworn, which ſeems to be a deteſtable omination toward the Prieſts of God.*

Joſephus relates it, that the *Eſſenes* Word was as ſure as an *Oath.* So great likewiſe was the reputation of the *Chriſtians* in the *Ancient* times for truth in Matters *aſſerted* or *promiſed* by them, that the Saying of *Chriſtianus ſum* did frequently paſs currant for the *Cautio Juratoria.* And I ſhall always with reverence think of *Bellarmine*'s *Tutiſſimum*, and of *S. Auſtin*'s *Nullum Juramentum tutum.*

A late ingenious *Writer* apply'd to the Clergy's obtaining *Canons* for their not *Marrying*, the Obſervation *that they always knew what was good for themſelves*; but I ſhall think it more *applicable* to what I read of in the *Book* of Mr. *Ley* beforementioned, *p.* 112. that *as S.* Baſil *was very zealous in behalf of Biſhops that they might not be put to ſwear in reſpect of the Peril of an Oath, ſo he prevail'd ſo far as to free them from that Peril: and that the Council of* Challons, *Can.* 18. *was thus favorable to Presbyters: and that the* Triburienſian *Council favour'd them with this Conſtitution, that a Presbyter ſhould not be compell'd to ſwear, but inſtead of an Oath, he ſhould be queſtion'd upon his* Holy *Conſecration* in verbo ſacerdotis: *becauſe* (*as the reaſon is there rendred*) *Our Lord forbad his Diſciples to Swear.*

And I ſhall tell you, that if you will allow *Lawyers* to *know* what is *good* for themſelves, you will find them of all ſorts of men to have the greateſt averſion againſt being *Witneſſes.*

The *Jeſuites* too, who are by all reputed *wiſe in their Generation*, are by Dr. *Donne* in his *Pſeudo-Martyr*, p. 350. referred to as having ſo *extraordinary* an *averſion* againſt *Oaths*, that he cites the *Spongia pro Jeſuit*, p. 79. for their *out-doing* the *Eſſenes* in *hyperbolical Deteſtations of Oaths.*

I account it for the honour of the Age that any one doth fall under the Character of *bipedum nequiſſimus* who being ſued by a *Quaker* at Common-Law for a juſt Debt, would *obſtruct* ſuch *Debt* by an *Injunction* out of *Chancery*, till the *Quaker* hath there anſwer'd a Shamming *Bill* upon his Oath.

And as by the *Clemency* of His *Majeſty*'s Government, *Quakers* there making Anſwer upon their *Oath* to *Captious* Bills hath been to the general Satisfaction of the compaſſionate Juſt (as it were) *tacitly* diſpens'd with, and as likewiſe their *Promiſſory* Oaths of Allegiance have been, I doubt not but his *expreſs* or *tacit* diſpenſing with other Loyal and Conſcientious particular Perſons doubting of the lawfulneſs or expedience of ſome *Promiſſory* Oaths, will be as generally grateful.

I wiſh there were no greater *Superſtition* in the World then the *Quakers* ſo much reſtraining to their *epitomes* of *ſpeech* in *Commerce* the interpretation of thoſe words in *S.* Matthew, *But let your Communication be Yea, yea, Nay, nay*, &c. which were purſuant to the *Proverbial* Saying among the Jews, *Juſtorum etiam eſt etiam, & non eſt non.* And as King *Athelſtan*'s Charter to his Tenants the *Inhabitants* of *Rippon* I have elſewhere mention'd, *viz.* Quod homines ſui Riponienſes ſint credendi per ſuum Ya

& per ſuum Nay, in omnibus querelis & curiis, &c. hath been by none that I have heard of *look'd* on with an *evil eye*, ſo neither by me ſhould the like *Diſpenſation* granted by our Prince to any others he repined at.

A. Your having (as it were) *diverted* me by the thought of that *Superſtition* of the *Quakers*, brings to my mind the pleaſant Entertainment you once gave me by lending me a *Book* writ long ago, call'd *A brief Treatiſe of Oaths exacted by Ordinaries and Eccleſiaſtical Judges to anſwer generally to all ſuch Articles or Interrogatories as pleaſeth them to propound: and of their forced and Conſtrained Oaths* ex officio, *wherein is proved that the ſame are unlawful.* And I remember much of the matter in that Author being dull, I came to ſomewhat at laſt recited by him, that had in it ſome *Sales*, or what I may call ſome drops of *Spirit* of *Vitriol*, and which were but neceſſary to give a grateful *acidity* to his *Atozeme*, when he toward the end of that *Book* of *Oaths*, in *p.* 56. and 57. thus brings in a *RATIONALE* of the *Ceremonious* manner of giving an Oath, and of the Manufacture of it as ſome men do *fidem facere* by it, *viz. For in this matter of an Oath they have deviſed according to their toying fantaſie a certain fooliſh figurative Ceremony in the miniſtring thereof. For the Deponent forſooth muſt lay his three middle Fingers ſtretch'd outright upon the Book in ſignification of the Holy Trinity and Catholick Faith, and his Thumb and little Finger he muſt put downward under the Book, in token of Damnation both of Body and Soul, if he ſay not the truth. The Thumb belike as the greater, repreſenting the heavy maſs of the Body: and the little Finger the light and incorporeal ſubſtance of the Soul. How ſuperſtitious alſo they were concerning this Ceremony of the Book (little regarding the true uſe and end of an Oath) as appears by the Allegorical Expoſition curiouſly ſet forth by one of their Perſonate and Counterfeit Prelates, who ſaith that the Circumſtances in the Act of an Oath are very great and weighty, inaſmuch as he that Sweareth by a Book doth three things: Firſt as tho he ſhould ſay, Let that which is written in the Book never do me good, neither the new nor the old Law if I lye in this mine Oath. Secondly, he puts his Hand on the Book, as tho he ſhould ſay, Nor the good work which I have done profit me ought before the face of Chriſt, except I ſay the truth which is founded in Chriſt. Thirdly, he kiſſeth the Book, as tho he ſhould ſay, Let never the Prayers and Petitions which by my mouth I have utter'd, avail me any thing to my Soul's health, if I ſay not truly in this mine Oath. Yet you muſt take this as meant only by this Reverend Father where Lay men, or the baſer ſort of the Clergy take an Oath. For that bleſſed* Bonner *not long ſince hath taught us this trick of his Law, that a Biſhop may Swear (ſuch is his Privilege)* inſpectis Evangeliis & non tactis; *bare ſight of the Book without touch or kiſs, will well enough ſerve his Loraſhip's turn.*

B. Well Sir, throwing out of our thoughts the *minutiæ* of all formal trifling, let us not at the ſame time try to make men *laugh* and weep by impoſing Oaths on them. And let the Conſideration of this, namely that the *Noble* Morals enjoyn'd by the *Chriſtian* Doctrine have not prevailed all this while to ſecure *Chriſtians* againſt one another without the *Garranty* of Oaths, or by the *Chriſtianus ſum* not being ſtill judged *æqui-ponderous* with an Oath, impreſs a ſolemn grief on our Minds. And conſidering that both the *Verbum Regium*, and the *verbum Sacerdotis* have been ſo much allow'd *equal* to *Oaths*, and that all *Chriſtians* ought to *value* themſelves on being *A Royal Prieſthood*, and on their great *Chief* having *made them Kings and Prieſts to God and his Father*, let us bemoan the preſent State of Chriſtianity and *Chriſtians*, having (as it were) *Decreed* it that they cannot take one anothers words. And let the thought likewiſe of the *inſufficiency* of

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the *Security* of Oaths themſelves to keep up *Governments*, work in us ſuch a ſerious Mortification and Profound ſenſe of the *degeneracy* of Mankind, and ſuch an inclination to place our chief Confidence in ſomewhat above the words, or Oaths of men, as becomes us.

But I ſhall give you an *inſtance* of this at *home* too pregnant with horror. Our thoughts have had a long melancholy *walk* in the *Periſtyllium* of the many *Interpretations* that ſupported our Great *Oath* of *Supremacy*, and as to which Oath it being probable that a *vulgar* Error having prevailed among many of the *Faction* for ſome time before the *year* 1640. namely *that the Oath of Supremacy was intended to bind only in oppoſition to Popery*, occaſion was thereby given to the *Fathers* of our *Church* to procure the laſt *Authentick* Interpretation of the *Aſſertory* part of the *Oath* in the *Canons* of 1640. and cautioning us there in the firſt *Canon* againſt any *Independent Coactive Power whether* Papal or Popular. But after our view of the orderly and neceſſary placing of all theſe poliſh'd and ſtrong *Pillars* of *Interpretation* erected between the time of *Primo Elizabethæ* and the *year* 1640, and after Providence ſo ordering it at laſt, that the *Conſciences* of the *Loyal* who were then reſerv'd as *Lyons* to guard the *Throne*, had then a clear *Oath* to guard their Loyalty, and after their having then cauſe to ſay *Tantæ molis erat* to render the Oath both acceptable to Conſcience and adequate to its firſt reaſonable intention, the Land was puniſh'd with a dreadful *Rebellion*, and the *ſacred* Obligations of the *Oath* and all its *Interpretations* could no more quench the raging Flames of the *Civil* War then the ſprinkling of a little Holy Water could ſave a Town on fire.

You may therefore here again more particularly take it into your thoughts, that there is ſomewhat beſide or beyond *Oaths* neceſſary to incline Heaven to Preſerve States and Kingdoms and Eccleſiaſtical Polities therein, namely the truſting in God, and offering to him what the 51. *Pſalm* calls *the Sacrifices of God*; and without which the thought of the *tantæ molis* and the endeavour'd piling *Interpretation* upon *Interpretation*, or Oath upon Oath as high as Heaven, and thereby deſigning to keep men together embody'd and united in the external Profeſſion of any State-Religion, will prove as inſignificant as did the old *Politicks* I ſhall refer you to in the *Sacred* Story, and when *the whole Earth was of one Language, and of one Speech*, and the *Vogue* was, *Let us build a City and Tower whoſe top may reach to Heaven, and let us make us a Name, leaſt we be ſcatter'd abroad on the face of the whole Earth.* But Heaven confounded their *Language*, and their City was call'd *Babel*, and their feared Diſſipation was their Puniſhment. They were ſo diffident of the Divine Promiſe whoſe *garranty* they had, that they were reſolv'd by their own hands to provide againſt all Dangers of a future *Deluge*, and having built their *Tower* with *Brick*, they thought 'twould defend them from the Power of *Fire*, concerning which they had heard the *Tradition* that a general Deſtruction of the World ſhould proceed from the fury of that *Element*; and they vainly endeavour'd to ſecure themſelves againſt the anger of Heaven rather by a lofty Pile, then by lowly Minds.

A. That wretched *vulgar* Error you referr'd to, did ſhew that the *line* of *Confuſion* was *ſtretch'd* forth on Men's underſtandings as well as on the Realm in that *Conjuncture*: and I have obſerv'd that that vulgar *Error* did laſt to the very time of the *ferment* about the *Excluſion*, and long before which time as well as then ſome have talk'd and writ at this rate, *viz. That the Oath of Supremacy was expreſly made (as the title of it ſhews) to ſhut out the Uſurpation of foreign Powers and Potentates, and was*

not meant to provide againſt any popular Uſurpations or Diminutions of the King's Supreme Authority.

B. O God! But to *ſpeak* or *write* at that rate to *Conſcience*, is *Chicantrie*. And I have elſewhere mention'd what one whom I cannot too often mention to be as *fair* a *dealer* with *Conſcience* as any the *Age* hath had, told us in his *ſixth Lecture* of *Oaths*, about the *Oath* of *Supremacy* binding in this Caſe. You know I mean Biſhop *Sanderſon*, who there ſhews, that *tho Popes Uſurpations or arrogating to themſelves the Supreme Juriſdiction in* ſpiritualibus *throughout this Kingdom, was the Cauſe of the Oath of Supremacy, yet the Oath is obligatory according to the expreſs words in the Utmoſt Latitude: the reaſon is, that the intention of a Law is general to provide againſt all future inconveniences of the like kind, or nature.*

Moreover the words in Queen *Elizabeth*'s **Admonition** referring to *the Perſons call'd to Eccleſiaſtical Miniſtry in the Church*, as the doubters, and the tenour of all the ſubſequent *Interpretations* as ſpeaking them *principally* occaſion'd by the doubters in the *Church* of *England*, do further ſhew the Vanity of that Objection.

And if you will more particularly think of the *Queen*'s Authentick *Interpretation* of that *Oath* and *approved* in *Parliament*, you will find the *Oath* of *Supremacy* to be an **Oath of Allegiance**, and that it may be ſo likewiſe *properly* termed. For in the beginning of the **Admonition** you will thus find it, *viz.* **The Queen's Majeſty being informʼd that in certain places of this Realm, ſundry of her native Subjects being callʼd to Miniſtry in the Church, be by ſiniſter Perſwaſion and perverſe Conſtruction, induced to find ſome ſcruple in the form of an Oath, which by an Act of the laſt Parliament is preſcribed to be required of divers Perſons for the recognition of their ALLEGIANCE to her Majeſty**, &c.

A. As one may perceive by what the Queen's *Interpretation* in the *Admonition* refers to, that there was a great *ferment* in the Kingdom about the *ſenſe* of the *Oath*, ſo ſuitably to what you mention'd of the *Prudence* of our *Anceſtors* that caus'd various *ferments* to *go off* ſo *inſenſibly*, the next *Parliament* in *approving* her *Interpretation* without troubling themſelves to queſtion the *Authentickneſs* of it, doth corroborate your obſervation of the Excellence of the *Engliſh* underſtandings.

B. It doth ſo. The *fermentation* in the minds of the People you ſpeak of had been *Epidemical*. And tho one might fancy by the *Proem* of the **Admonition** that the *Interpretation* as well as the *Diſpenſing* with Diſability had an eye but on an inconſiderable number of People there referr'd to in the forementionʼd words of **ſundry of her Majeſty's Native Subjects in certain places of this Realm**, &c. yet any one who knoweth the *Hiſtory* of thoſe times will find the *Interpretation* and *Diſpenſation* (as I may ſay) *Calculated* for the *Meridian* of all *England*, and the *Interpretation* having an eye on all *Chriſtendom*.

There was then in the *Morning* of that *Queen*'s Reign, and of the reſtoration of the Reform'd Religion, ſuch a thick *miſt* of cauſeleſs *Fears* and *Jealouſies* that had generally o'erſpread the minds of *Proteſtants* and *Papiſts* ſhortly after the Birth of the Statute of 1° *Eliz.* c. 1°. that nothing but the *Supremacy* both of *Power* and *Reaſon* that ſhone in her authentick *Interpretation* of that *Statute* could diſperſe, and that too not ſuddenly. For as Mr. *Nye* in his Book of *Two Acts of Parliament*, or *Obſervations on that Oath*, tells us, *It is mentionʼd in the Admonition that the Queen's Eccleſiaſtical Power is the ſame that was challenged and uſed, by* Henry *the* 8th, *&c. which is ſuppoſed by ſome to be the ſame that was in the Pope, the Perſon only and*

not

not the Power changed: ſo that our Princes are but ſecular Popes. This Objection was ſtrengthen'd by the ſubtlety of Gardiner *abroad: and at home by a Sermon Preach'd at* Paul's Croſs *in the year* 1588. *by Dr.* Bancroft, *who calls Q.* Eliz. *a Petty Pope, and tells us her Eccleſiaſtical Authority is the ſame which the Pope's was formerly:* and in the Margin oppoſite to what he had ſaid of the ſubtlety of *Gardiner, ſtrengthening the Objection abroad*, hath theſe words, viz. *Whom* Calvin *terms Impoſterille.* And Mr. *Nye* afterward goes on to ſhew how the 37th *Article* did remove the Objection ſufficiently.

The *Author* of *The true Grounds of Eccleſiaſtical Regiment*, Printed in *London*, A. 1641. doth in *p.* 53. mention ſome mens objecting it againſt the Eccleſiaſtical *Supremacy* of our Monarchs, *that it may deſcend to Infants under Age, as it did to King* Edward *the 6th, or to Women as to Queen* Mary *and Queen* Elizabeth, *and that whatſoever we may allow to men, ſuch as* Henry *the 8th; yet it ſeems unreaſonable to allow it Women and Children. The Papiſts think this Objection of great moment, and therefore* Bellarmine *in great diſdain caſts it out, that in* England *they had a certain Woman for their Biſhop; meaning Queen* Elizabeth: *and ſhe knowing what an odium that word would draw on her both among Papiſts and many Proteſtants alſo, Conſults her Biſhops about it, and by their advice ſets forth a Declaration, certifying the World thereby, that ſhe claim'd no other Headſhip in the Church, but ſuch as might exclude all dependency on foreign Headſhips, and ſecure her from all danger of being depoſed,* &c. *The Biſhops in this did as warily provide for their own Claim as the Queen's.* And the Roman-Catholick *Author* of the *Advocate for Conſcience Liberty*, diſcourſing of the *Oath* of *Supremacy* in *p.* 181. *& ſeq.* ſaith, *That* Luther, Calvin, Knox, Gilby *diſliked it:* and mentions *that a Juriſdiction purely ſpiritual was communicated to* H. *the 8th by his Supremacy, and aſſumed by him, and that he wanted his Spiritual Bytitle of Supremacy to juſtifie his Divorce, and his taking the Church Revenue into his hands: and that the Protectorſhip in* E. *the 6th's time by virtue of the Oath of Supremacy continued to make new Church-Laws, Inſtitutions,* &c. *and that Queen* Elizabeth *reaſſumed this Juriſdiction, having a greater neceſſity for it then her Brother, becauſe her Marriage was declared null by the Pope.* So then the ſtate of *Proteſtancy* abroad and at home call'd on the *Queen* to *diſtribute* or *diſpenſe* her *Supreme* Power in her *Law* by her *Interpretation* making a *change* not *of* it, but *in* the body of it: and which had it been *changed* by a *repeal* in *Parliament* for another, would have ſeem'd to blemiſh her figure of *ſemper Eadem*, and have reflected on the Underſtandings and Conſciences of thoſe who had before took the Oath.

There was then in that Conjuncture an univerſal *outcry* of *Conſcience* that *Sin lies at the door*, a thing worſe then *Hannibal ad Portas*; a burthen that hath caus'd all the *Groans of the Creation* that ever happen'd. And where there is *Periculum animæ* there is always *Periculum in morâ*, and which the Queen's authentick *Interpretation* did remove, and which was *approved* by the next Parliament: and no *noiſe* made or *complaining* heard *in our ſtreets* about any ſeeming *Alteration* made in the *Law* or *Oath* it ſelf, by the Prerogative of interpretation or acquittal from the diſabling Puniſhments then exerciſed. And it is but congruous to *humane* Nature and common Policy in men when they ſee any thing not ill in it ſelf done that hath eminently conduced to make the World *eaſie*, not to *embaraſs* ſuch thing with litigious ſcruples about the *fieri non debuit*, nor to adventure to trouble the World again when it is inclined to and reſolv'd upon its reſt. Some thoughts of this Nature probably inclined my Lord *Coke* to ſhew the Complaiſance he did, not only to King *James* his *incapacitating* Canon about the

the *double* Subſcription, but as to the *Oath* againſt *Simony* & that of *Canonical* obedience, and which inclined Judge *Croke* to be pleas'd with the *Canons* of 1640. tho containing the *Oath* with an *Et cætera*, and which made the *Judges* ſo apt to over-rule ſome of Sir *E. Coke*'s Exceptions to the *Sheriffs* Oath, as I have mention'd.

You may indeed find that ſome among the *Puritans* in ſome Conjunctures in Queen *Elizabeth*'s time, did preſume to reproach the Government of the *Church* with her having *diſpens'd* with the *diſability* of ſome Perſons incurr'd by *Act* of *Parliament*. The *Author* of the *famous* Book publiſh'd in her Reign, call'd, *An Abſtract of certain Acts of Parliament*, hath in the *Concluſion* theſe two factious *Queries*, viz. *Whether a mere Lay-man, no Doctor of the Civil Law, may be a Biſhop's Chancellor, and ſo may Excommunicate? Whether a mere Lay-man no Doctor of the Civil Law, may be a Biſhop's Regiſter, contrary to an Act of Parliament?* The *Author* intendeth there to referr to the *Statute* of 37°. *H.* 8. c. 17. and as he had before expreſly done in *p.* 196. *& Seq.* and of which *Statute* we have ſo much diſcours'd; and he in *p.* 201. inſtanceth in *many Lay-men who were not Doctors of the Civil Law, and yet then exerciſed Eccleſiaſtical Juriſdiction.* He had too in *p.* 196. took notice that as that *Statute eſtabliſh'd and confirm'd to the King and his Succeſſors, and ſo unto our moſt Gracious Soveraign the Queen's Majeſty that now is, lawful Preheminence, Power, Superiority and Lordſhip over all Perſons within her Dominions of what ſtate or Condition ſoever, touching Puniſhments for any Hereſies, Errors, Vices, Schiſms, Abuſes, Idolatries, Hypocriſies and Superſtitions ſpringing or growing by means of any her diſobedient and diſloyal Subjects; ſo hath her Majeſty by her Injunctions publiſh'd, that her Highneſs did never pretend any Title or challenge any Authority to puniſh any of her Subjects for any of the ſaid Offences by Cenſure Eccleſiaſtical in right belonging to her Royal Perſon; but that her Highneſs meaning and intent is and always hath been to commit the execution thereof always to the Eccleſiaſtical State of her time:* and he then ſets down her *Interpretation* in the **Admonition.**

But had that *Author* conſider'd how it was **declared** by that **Statute**, that **by Holy Scripture all Authority and Power is given to His Majeſty, and all ſuch Perſons as His Majeſty ſhall appoint to hear and determine all manner of Cauſes Eccleſiaſtical, and to correct Vice and Sin whatſoever**; and that this *Statute* was *revived* by the 1*ſt* of *Eliz.* he would not have wonder'd at the *Queen's* allowing that *Statute* to be *diſpens'd* with as it was. Nor would any one therefore wonder at the Royal Martyr in the 12th and 13th *Canons* of *A.* 1640. *Condeſcending* to humour the Complaints of the *Puritans* by an equal *Interpretation* of that *Statute* of 37° *H.* 8. and by *diſpenſing* with it as he did; and that ſo far as to the diſabling *Lay-Chancellors* to proceed in ſuch *Cenſures* as they were *enabled* by that *Statute* to do.

Mr. *Bagſhaw* in his firſt *Argument* in *Parliament* concerning the *Canons* thus reflects on the *Clergy* for thoſe *two* Canons, *viz. Concerning the 12th and 13th Canons touching the freeing and diſcharging of Chancellors and Officials from executing any Excommunication in their own Perſon, or any Cenſure againſt the Clergy, becauſe they are Lay-men; I ſay, that in doing and enacting this they have done quite contrary to an Act of Parliament ſtill in force, in taking from them this Power of exerciſing the Cenſures of the Church which that Statute gives them: which I did look when ſome Civilians now in the Houſe ſhould have maintain'd. And altho it were to be wiſh'd that only Clergymen ſhould have this Power of Excommunication, and other Cenſures of the Church; yet ſeeing an Act of Parliament hath*

given

given this Power to Lay-men, it is high Presumption to make Canons against it.

But he well knew that after the *stamp* of the *Royal* Authority put on these *Canons* as well as *before*, Lay-men in the *Court* of *Delegates* did Excommunicate, and as they did in the *high* Commission. And you may observe it, that in the *Commission* granted *Primo Elizabethæ* to her *Commissioners* pursuant to the *Statute* of that year, there were but *two* Clergy-men (and those *Bishops*) and 17 *Lay-men.*

My Lord *Coke*, Inst. 4. c. 74. writing of the *High Commission* in Causes *Ecclesiastical*, saith, *There is no question but the Commissioners for such Causes as are committed to them by force of this Act, may, if the Commissioners be Competent, proceed to deprivation of the Popish Clergy, which was the main object of the Act, or to punish them by Ecclesiastical Censures*, &c. *And without question if the Commissioners be* COMPETENT, *that is, if they be spiritual men, they may proceed to Sentence of Excommunication, which may right well be Certify'd as well as Excommunication before Commissioners Delegates: both of these Authorities being under the Great Seal*, &c. *And Excommunication certify'd by Commissioners Delegates hath been allowed as it appeareth in* 23. Eliz. Dyer. 371. *And in many Cases Acts of Parliament have adjudged men Excommunicate* ipso facto. *But if they be meer Lay-men, the fault is not in the Statute or in the Law, but in the Nomination: and upon Certificate made of the Excommunication according to Law, a* Significavit, *or* Cap. Excom. *shall be awarded out of the Chancery, for the taking and imprisoning the Bodies of such Excommunicate Persons.* But had his Lordship (as I said in the Case of the other *Author*) consider'd how by the *Statute* of 37. *H.* 8. it was **declared** that **by Holy Scripture all Authority and Power is given to His Majesty, and to all such Persons as he shall appoint to hear and determine all manner of Causes Ecclesiastical, and to correct Vice and Sin whatsoever**, he would not (I believe) have thought Lay-men *incompetent* or incapable Persons so to have acted in the *high Commission*, or *Delegacy*, or have said *there was any fault in the Nomination of Lay-men.*

And yet you see my Lord *Coke* shews you how the *Government* then acquiesced in such *Nomination*; and *assisted* the *execution* of the *Sentences* given by such as he thought *incompetent.*

Nor are we therefore to wonder at what Mr. *Bagshaw* mentions of *the Civilians in the House of Commons not objecting that the King had done contrary to an Act of Parliament in taking from Bishops, Chancellors and Officials the Power of exercising Church Censures given them by the Act:* and which by the Power *declared* in that *Act* to be given him by *Holy Scriptures*, he might have either continued to them, or abridged or taken away the exercise thereof from them, if he had pleas'd. And considering that the *Lex Scandali* doth equally *oblige* Kings as well as Subjects in *Point* of *Conscience*, it is not to be wonder'd that that *Tender-conscienced* King did in that Conjuncture think himself obliged so equitably to make his *Interpretation* of that *Statute* as in complaisance with some of his Subjects who had *took* offence at *Lay-Chancellors* Power of Excommunicating, to disable them to it.

I told you before how that Pious Prince did in complaisance with the *Fathers* of our *Church* think himself obliged to exercise his *Regal* Power of interpreting or *declaring*, and when in *A.* 1637. he issued out his *Proclamation Declaring that the Bishops holding their Courts and issuing Process in their own Names were not against the Laws of the Realm*, and that the *Judges* resolutions were notify'd therein to that purpose, and that the *fer-*

ment about that Point was ſetled, and the Biſhops *iſſuing* out their *Proceſſes*, was ſetled too; the which *Proclamation* too you will find Mr. *Bagſhaw* mentions in his *ſecond Argument*, where *p.* 40. he tells you of *the Biſhop's having procured a Proclamation*, A. 1637. *declaring the Opinions of the Judges, that the Statute of* 1° Edw. 6. c. 2. *is repeal'd and of no force at this day*, and *that Biſhops may keep Courts in their own Names.* And I ſhall now tell you, that as in the *year* 1637. the *Biſhops* were in ſo *full* and *peaceable* poſſeſſion of their Privilege of *iſſuing* out of their *Proceſſes* in their *own* names, by means of what His *Majeſty* had *declared* purſuant to the *Reſolutions* unanimouſly given by all the *Judges* and the *Barons* of the *Exchequer* (and of which Sir *E. Coke* ſaith, *Inſt.* 2. *that they are for Matters of Law of higheſt Authority next to the Court of Parliament*) ſo by *Judgment* of *Parliament* the *ſettlement* of that Controverſie by virtue of His Majeſty's *Declarative* Power ſo exerciſed, was afterward *approved.*

A. That is a thing I would gladly hear of; for one would think that the exerciſe of the Regal Power of *Declaring* or *Interpreting* what relates to an *Act* of *Parliament* might occaſionally heighten a *ferment* in ſtead of abating it.

B. You will find little or no cauſe if you conſult our ancient *Engliſh* Story (and there ſee how the mutual *Confidence* between King and People hath in ſeveral Ages ſupported the Government) to fancy that *Declaratory* Proclamations relating to *Acts* of *Parliament* did make any ferment. The *Interpretation* of the *Statutes* hath in all *Cauſes* between Party and Party, and wherein *meum* and *tuum* and *Property* are concern'd, been by ancient uſage under our Kings ſtill left to the *Judges:* and the *Proclamations* of our Princes on great *emergent* occaſions in the State *declaring* or *interpreting* their Laws purſuant to the *Supreme* Power committed to them by God for the good of their People, hath ſtill been obſerv'd to tend both to the good of the *People* and the *Laws* too. If you will look on all the Declaratory *Proclamations* in the Reigns of Queen *Elizabeth* and King *James*, of which you have a *Collection*, you will (I believe) find none but what were acceptable among all their Loyal Subjects.

But as to this Declaratory *Proclamation* of King *Charles* the Firſt beforemention'd, you will find it (as I told you) *approved* in Parliament. And if you will pleaſe to conſult in your *Statute-Book* the *Act* of 13° *Car.* 2. c. 12. of which the *title* is *Explanation of a Clauſe contain'd in an Act of Parliament made in the* 17*th year of the late King* Charles, *Entituled an Act for repeal of a branch of a Statute* 1° Elizabethæ, *Concerning Commiſſioners for Cauſes Eccleſiaſtical*, you will there find that this *Act* of the late King's *loyal* long *Parliament*, viz. 13° Car. 2. hath in it three Proviſo's. The *firſt* is concerning the *High Commiſſion-Court:* the *ſecond* Proviſo is concerning the taking away the Oath ex officio. And the *third* Proviſo is, to limit and confine the Power of Eccleſiaſtical Judges in all their Proceedings to *what WAS and by Law might be uſed before the* year 1639, which plainly includes, allows and *approves* King *Charles* the *Firſt*'s Proclamation in the year 1637.

In the time of a former diſloyal long Parliament, the *Regal* Power of *Interpreting* or *declaring* was by them repreſented as a *Gravamen*, and while yet they *uſurp'd* that Power themſelves. If you will look on the *Declaration of the Lords and Commons, in* Husband's *Collections*, p. 686. you will there find they ſay, *It is high time for the whole Kingdom now to underſtand that His Majeſty's Authority is more in his Courts without his Perſon then in his Perſon without his Courts, when the Power of* DECLARING *Law ſhall be deny'd to the whole Court of Parliament in particular Cauſes before them,*

(*for*

(*for we have claim'd it, we have exerciſed it no otherwiſe to be obligatory as a judicial Declaration of the Law*) *and ſhall be attributed to His Majeſty to do it in general by his Proclamation without relation to a particular Caſe, and making his Interpretation of the Law to be a rule in all Caſes, as in divers late Proclamations he hath done.* And if you will look on *His Majeſty's Anſwer to the Declaration of both Houſes of Parliament of* July 1. 1642. you will find there very many Profound Obſervations and Preſidents, and Authorities of Law, and wherein he ſeveral times refers to **the happy times of that good Queen** Elizabeth, as well as to ancient Times, and he thence taking his meaſures, ſaith in *p.* 15. **The King caus'd Proclamations to be made; for in ſuch Caſes Proclamations declaratory were not conceiv'd in thoſe times to be illegal**, &c.

And you may eaſily imagine this Power of authentick *Interpretation* very well Conſiſtent with the juſt Power of the *Houſe* of *Lords* in declaring the Law in a *particular* Caſe: of which I occaſionally mention'd to you the late *Earl* of *Angleſy*'s opinion. But how not only the *Lords*, but the *Houſe* of *Commons* did often during the late Rebellion encroach on the Regal Power of *declaring*, and by Ordinances without and againſt the King's conſent, I ſhall ſome other time ſhew you at large.

A. Can you readily now at this time give any inſtance of the *Houſe* of *Commons* then doing any thing of that Nature?

B. Yes: and I can refer you for the *fact* of it to *The Declaration of King* Charles *the Firſt, of* Auguſt 12. 1642. *to all his loving Subjects*; and who there mention, *That after ſeveral intimations of Treaſons, PLOTS, and Conſpiracies by the Papiſts, of great Proviſions of Arms by them, and training Men under-ground, and many other falſe Reports created, ſpread and countenanced by themſelves upon ſome general Apprehenſions of Deſigns againſt them, a* **Proteſtation** *is made in the Houſe of Commons for Union and Conſent among themſelves to perform thoſe Duties which (if they had meant no more then they had expreſs'd) had been ſufficiently provided for by the Oaths they had already taken, and which their former Duties obliged them to. Hereupon a Proteſtation is framed, and being put into ſuch words as no honeſt man could believe himſelf obliged by it to any unlawful Action, was voluntarily taken by all the Members of the Houſe of Commons, and preſently recommended to the Houſe of Lords, where it receiv'd the ſame Countenance: that is was look'd upon as containing nothing in it ſelf unlawful, tho ſome Members of that Houſe refuſed to take it as being voluntary, and not impoſed by any lawful Authority. Then 'tis recommended to the City of* London, *and over all the Kingdom by Order from the Houſe of Commons (a ſtrange and unheard of Uſurpation) to be taken by all Perſons. But within very few days, upon Conference among themſelves, and among thoſe Clergymen who daily ſollicite their unlawful and unwarrantable Deſigns with the People, they find they were by this Proteſtation ſo far from having drawn People into their Combination, that in truth all men conceiv'd that they were even engaged by it againſt their main Deſign, by promiſing to defend the true Reform'd Proteſtant Religion expreſs'd in the Doctrine of the Church of* England: **And thereupon ſome Perſons of that Faction prevail'd, that after the Members of the Houſes had taken it, a Declaration was ſet forth by the Houſe of Commons, that by thoſe words The Doctrine of the Church of England, was intended only ſo far as it was oppoſite to Popery, and Popiſh innovations, and that the words were not to be extended to the maintenance of the Diſcipline and Government, &c. and ſo under this Explication and Declaration publiſh'd only by the Houſe of Commons, and never aſſented to by the Houſe of Peers, this Proteſtation was directed**

rected to be generally taken throughout England. And to that purpose a Bill is drawn, passed the House of Commons, and sent up to the House of Lords, who at the second Reading finding many particulars in it unfit to be so severely imposed upon the Subjects absolutely rejected.

You see here again an *Instance* of the Prudence of the great *Consiliarii Nati*, His Majesty's *great Councel*, in not aiding the Faction against *Prerogative* in that Point. For tho on the account of His Majesty's *tacit* Dispensation by way of *Connivence* presumed in that Conjuncture, many of the Loyal of the *Church* of *England* did *take* that *Protestation* and concur in the recommendation (His Majesty not having *Prohibited* the *taking* of it, as he did afterward by a Proclamation forbid the *taking* of the *Covenant*) yet when it was visible that such an *Interpretation* so encroaching on the Church of *England*, and on Prerogative, was design'd without and against His Majesty's Approbation to be imposed on the People; it is not to be wonder'd that the *Lords* (as things then were) rejected a *Bill* of that Nature.

But it follows then in His Majesty's *Declaration*, Yet of this we took no notice, but pressed still the Disbanding of the Armies, &c. so that the *ferment* about the *Protestation*, and the trouble it gave the Kingdom by the *Super-induced* Interpretation, were in a short time over.

A. You having from the occasion given you by Queen *Elizabeth*'s Power of *interpreting*, and by her *dispensing* with disability in all who took the *Oath* of *Supremacy* according to the sense notify'd in The Admonition, referr'd my thoughts often to the *Regal* Power of interpreting, and having in the beginning of our Discourse this meeting, left it to me to consider how much *the Power of Dispensing with any Law may be thought co-incident with interpreting*, and promised me that you would some other time shew me at large that *the Dispensing with Laws is in effect the equitable interpreting that in such and such Cases and Circumstances they were not intended and ought not to bind, but ought to be relax'd*, I shall be glad if before we part, you would do it.

B. I had rather do it at our next meeting. And if in the mean time you please to entertain your self with Bishop *Taylor*'s *Ductor Dubitantium*, you will there find much learnedly writ of this subject. And he there in *l.* 3. *c.* 6. particularly tells us, that *the Interpretation of Laws made by Judges, is matter of Fidelity, and nothing of Empire and Power: and it is a good probable warranty of Conscience, but no final Determination in case any doubt happen to oppose it. No man is to ask favour of the Judge, but of the Prince he may.* And he had before said, *That when the Power that made the Law doth interpret it, the Interpretation is authentical and obligeth Conscience as much as the Law, and can release the Bond of Conscience as far forth as the Interpretation extends, as if the Law were abrogated, and that whether it be by declaring the meaning of the Law, or by abating the rigour, or by dispensing in the Case, or enlarging the Favour, or restraining the Severity, it is all one as to the event of the Obligation of Conscience.*

A. But it seems then that he makes the *declaring* or *interpreting* the meaning of a Law, and *dispensing* to be different things.

B. He had an excellent *Metaphysical* head: and his *Method* of writing in that Chapter, *Of the Several ways of the changing of Humane Laws*, was *partly* after the Example of *Suarez* in his Book *De Legibus*, and who who was a voluminous Writer of *Metaphysicks*, and writing of any Subject could not *recedere ab arte suâ* in that Learning that is so infinitely prolifick of *Artificial* distinctions without *Natural* differences.

I men-

I mention'd the *Biſhop*'s but *PARTLY writing* after the way of *Suarez*; for he was far from crumbling the *weightier* Points of the *Law* into the *Minutiæ* of *Metaphyſicks* as the other did; and he in his excellent *Preface* doth very paſſionately complain of *Moral* Theology, having been made an *Art* of the *Schools*, and that *what God had made plain*, *Men have intricated*; and for that purpoſe ſaith, *There is a Rule among the Lawyers*, *which very much relates to the Conſcience of thoſe Men who are engaged in Suits and Sentences of Law in all Countrys which are ruled by the Civil Law*, in quolibet Actu requiritur Citatio: *of this Rule* Porcius *brings an hundred and ſixteen* Ampliations, *and an hundred and twenty four* Limitations, &c. And thus *Suarez* in his 6th Book *De Legibus*, (and the *Title* of which *Book* is, *The Interpretation, Ceſſation and change of Humane Laws*) hath there Twenty ſeven *Chapters* concerning the ſame: and where his *firſt* Chapter is, *Of the way of rightly Interpreting an Humane Law*: his 2d, *Of the Extenſion in them by Interpretation of them*: and his 3d, *Of the Extenſion to a Caſe not Comprehended*: his 4th, *Doubts of the Extenſion of Laws*: his 5th, *Of the Reſtriction by Interpretation*: his 6th, *Of the Ceaſing of the Obligation of a Law in particular Contrary to its words*: his 7th, *Of the Excuſing of a Law by Equity*: his 8th, *Of the Uſe of Equity without recourſe to the Prince*: his 9th, *Of the Ceaſing of a Law upon its Cauſe ceaſing*: his 10th, *Of Diſpenſation in an Humane Law*: his 11th, *Of the Effects of Diſpenſation*: his 12th, *Of the Material Cauſe of Diſpenſation*: his 13th, *Of the form of Diſpenſation*; and ſo on in the others with much *Metaphyſical* ſubtlety.

But the *Biſhop* in his before-mention'd Third *Book* and 6th *Chapter*, viz. *Of the Interpretation, Diminution and Abrogation of Humane Laws*, brings in but *ſeven* ways of the *changing* of *humane* Laws, ſo that the *Obligation* of *Conſcience* is alſo *changed*; whereof his *firſt* is by *Equity*. His *ſecond* is by *Interpretation*. His *third*, by a *Contrary*, *or a ceaſing reaſon*. And his *fourth* by *Diſpenſation*, &c. and of which *latter* he ſaith, *If we uſe the word improperly*, *Diſpenſation can ſignifie a Declaration made by the Superior that the Subject in certain Caſes is not obliged, that the Law-giver did not intend it*, &c. *but when Diſpenſation ſignifies Properly, it means an Act of mere Grace and Favour proceeding from an extrinſick Cauſe; that is, not the Nature of the thing, or the merit of the Cauſe, but either the merit of the Perſon, or ſome degrees of reaſonableneſs in the thing, which not being of it ſelf enough to procure the favour of the Law, is of it ſelf enough to make a man capable of the Favour of the Prince*, &c.

But as here in this *nice* diſtinction, he is enforced to make him who doth *diſpenſare* to do that which the *Canoniſts* make the *ratio nominis* of it, namely *diverſa penſare*, and in the Scales of *Equity* to *weigh* and *interpret* the degrees of the reaſonableneſs of the thing, ſo in his handling of the *Prince*'s Power of *interpreting*, he makes *Equity* Co-incident with it, and refers to the Law in the Code, viz. *Inter æquitatem juſq; interpoſitam interpretationem nobis ſolis & oportet & licet inſpicere*: and his inſtances of that *Power* of *Interpretation* are referr'd to the *favours* ſhew'd by it to *Perſons*, and particularly to *Solomon*'s *abſolving* Abiathar *from the Sentence of Death, becauſe he had formerly done worthily to the Intereſts of his Father* David. And then ſaith, *Now this Power tho it may be done by Interpretation, yet when it is adminiſtred by the Prince, it is moſt commonly by way of Pardon, abſolute Power and Prerogative. When a Law determines that under ſuch an Age a Perſon ſhall be UNCAPABLE of being the General of an Army, the Supreme Power can declare the meaning of the Law to be, unleſs a great excellency of Courage and maturity of Judgment ſupply the want of years: in which very Caſe*, Scipio Africanus *ſaid wiſely, when he deſir'd to be employ'd in the* Punick

War, Se ſat annorum habiturum ſi populus Romanus voluerit. *Thus* Tiberius *put* Nero *into the Senate at Fifteen years of Age, and ſo did* Auguſtus *the like to* Tiberius *and his Brother: and the People declar'd or diſpens'd with the Law in* Pompey's *Caſe, and allow'd him a triumph before he had been* Conſul *or* Prætor. And he had before ſaid, *When the Law-giver interprets his Law, he doth not take off the Obligation of his Law,* (i. e. meaning the Obligation of his Law in general) *but declares that in ſuch a Caſe it was not intended to oblige.* Tacitus *tells of a Roman Knight, who having ſworn to his Wife that he would never be divorced from her, was by* Tiberius *diſpens'd with, when he had taken her in the unchaſte Embraces of his Son-in-Law. The Emperor then declared, that the Knight had only obliged himſelf not to be divorced, unleſs a great Cauſe ſhould intervene.*

And thus *Suarez* himſelf in his ſaid 10th Chapter, *De Diſpenſatione in lege humanâ* makes *Diſpenſation* apply'd to ſignifie an act *quo quis ab obligatione legis eximitur,* and ſaith, *quia unus modus eſſe poteſt per Interpretationem, ideo potuit etiam in eâ ſignificatione uſurpari: tamen in hac etiam ſignificatione ſumpta, non quamcunque interpretationem legis, ſed illam ſolam quæ in caſu dubio, & per poteſtatem ſuperioris datur ad liberandum ſubditum ab obligatione legis ſignificat: quia hæc tantum eſt Actus adminiſtrationis & poteſtatis A DEO Commiſſæ. Et illa tantum tollit aliquo modo onus legis, quod ſine tali poteſtate auferri non poſſet:* and ſo (ſaith he) 'tis agreed on by all that *Diſpenſation* is an *Act* of *Juriſdiction: but 'tis drawn into the Law to ſignifie the taking away the* vinculum *of the Law in particular Caſes, and ſo we generally uſe it.*

A. But *Metaphyſicks* apart. I ſhall not trouble my ſelf about *what is what,* but *what* is my *Duty* by virtue of my *Oath.* And I obſerve, that what you cited out of the *Biſhop,* viz. *That when the Power that made the Law doth interpret, the Interpretation is authentical,* &c. may render him no favourer of an *Interpretation* not made in *Parliament* by the Legiſlative Power.

B. I ſhall ſometime at our meeting again obſerve to you what the *Biſhop* hath there aſſerted, *l.* 3. *c.* 3. that *Kings have a Legiſlative Power in the Affairs of Religion and the Church,* and where he ſaith, *that the LEAST part of this Power is to permit the free exerciſe of it, and to remove all Impediments, and to give it Advantages of free Aſſemblies, and Competent maintenance, and Publick Encouragements,* &c. And ſhall then ſhew you what Power *Circa Sacra* the *Church* of *England* with great Prudence and Juſtice allow'd our *Princes* in the introducing the *Reformation,* (and which its Conſtitutions and *Canons* have ſince owned) and from the *allowance* of which *Power,* our great Church-men then knew there could be *veſtigia nulla retrorſum* in the Caſe of a *Prince* of any other Religion coming to the Crown.

But I ſhall at preſent tell you that as to what I have mention'd to you out of *Suarez* and that *Biſhop,* altho you need neither now nor at any time to charge your memory with the ſubtlety of Diſtinctions, and of the *Propriè* and *minus Propriè* when you are in eager purſuit of the ſubſtance of things; you will find in both thoſe Authors what is very ſubſtantial about the Doctrine of Diſpenſing: and what I have cited of their rendring *Diſpenſing* and *Interpreting* thus Co-incident is *à propos,* and may mind you of Princes being both empow'red and obliged in Juſtice in their adminiſtration of the *executive* Power of their Laws to *declare* or *interpret* their Religionary *Penal* Laws as diſpenſable in relation to particular times and Perſons. And you may therefore here call to mind that paſſage in the *Council of Trent,* viz. *That on Fryar* Adrian's vociferating there about the Pope's *diſpenſing*

being

being an Arbitrary favour, *Verdune* the famous *French* Divine took him down with saying, *that it is a fond Perſwaſion that Diſpenſing is a mere favour: for it is as good diſtribute Juſtice as what is moſt ſo. And the Prieſt ſins if he giveth it not; for it is nothing elſe but a right Interpretation of Law.* You may very well ſuppoſe that thoughts ariſing from thoſe words in the *Ordination* of *Biſhops*, viz. *That you have your Authority not to deſtroy, but to ſave: not to hurt, but to help*, &c. *to be ſo merciful, as not to be remiſs: ſo to adminiſter Diſcipline, as not to forget Mercy*, &c. have formerly inclined our *Biſhops* in the Reigns of King *James* and King *Charles* the *Firſt* to think themſelves obliged to interpret and declare the Laws about Church diſcipline as diſpenſable, and to *diſpenſe* with them in the *Caſes* of Mr. *Hildersham* and Mr. *Dod*, as I told you at our laſt meeting. And can you here ſee an *Act* of *Parliament* that thus ſetleth the *Ordination* of *Biſhops*, and which *Act* not only allows but requires them thus to *Interpretari & diſpenſare in lege*, or in an *Act* of *Parliament*; and fancy it poſſible for the *King* (when as the *Act* of 37° *H.* 8. tells you that **Archbiſhops, Biſhops, Archdeacons and other Eccleſiaſtical Perſons have no manner of Juriſdiction Eccleſiaſtical, but by, under, and from his Royal Majeſty**) not to be empow'red to exerciſe ſuch Juriſdiction?

And I may here add, that when it is declared in the *Statute* of 1° *Eliz.* c. 2. that **the Queen's Majeſty may ordain ſuch further Ceremonies and Rites as may be moſt for the advancement of God's Glory**, &c. will any one wonder at the Crowns relaxing the *Penal* Laws about *Rites* and *Ceremonies* in the Caſe of particular Perſons; and as *Edward* the 6th (as is known) did in the Caſe of Biſhop *Hooper*? And if you have a mind to ſee an *Act* of *Parliament*, that not only *approves* the Prince's remitting of his Penal Laws, but what applauds ſome exceſs in ſo doing, I can for that purpoſe direct you to the *Act* of 1° *Edw.* 6. c. 12. in the beginning of which 'tis ſaid, **Nothing being more Godly, more ſure, more to be wiſh'd and deſired between a Prince the Supreme Head and Ruler, and the Subjects, whoſe Governor and Head he is, then on the Prince's part, great Clemency and Indulgency, and rather too much indulgency and remiſſion of his Royal Power and juſt puniſhment, then exact Severity and Juſtice to be ſhew'd**, &c.

But as when we were near the end of our former Conference, you rightly obſerv'd that many perverſe People would be *crying out* that *any lawful Diſpenſing with the Laws eſtabliſh'd*, was *Contradictio in adjecto*, ſo I ſhall now obſerve to you that any who to the diminiſhing from a Prince's *Character* of being *juſt*, preſume to inſinuate it that a *Prince's* valuing himſelf on that *Character*, and yet ſhewing *mercy* to ſome in releaſing them from the *Bonds* and *Penalties* of ſome of his Laws, is a *Contradiction*, do appear to me great objects of Compaſſion in ſo erring. And for this I ſhall refer you to the *Happy future State of* England, where in *p.* 233. 'tis ſaid that *He who ſeparates Mercy from Juſtice, is unjuſt to the very name of Juſtice, and robbeth it of the better half of its ſignification, leaving its teeth and claws, and taking away its heart and bowels.* Jarchas *the Indian, and Chief of the* Brachmans *in* Philoſtratus *is brought in finding fault with* Apollonius Tyaneus *and others of the Greeks, for that they confined and apply'd the word* δικαιοσύνη *to thoſe only who do no wrong to one another, and telling them that they were in an error, for ſaith he among the Chiefeſt Offices of Juſtice* χρηστότης *and* ἀγαθότης *together with* φιλανθρωπία *ought to be reckon'd up. And* δίκαιοι *and* χρηστοὶ *juſt and kind men are convertible terms in* Ariſtophanes, *and joyn'd both together in* Plutarch: *and* Ariſtotle *ſaith,* τὸ ἐπιεικὲς, *Moderation or Clemency is* δίκαιον δικαίου τίνος βέλτιον: *a piece of juſtice better then all juſtice.*

And

And you will find Mr. *Gregory* there cited for relating it in his *Opusc.* *That the Mahumetans have another Lord's Prayer, call'd by them the Prayer of* Jesus *the Son of* Mary, *and that endeth thus, And let not such a one bear rule over me that will have no Mercy on me, for thy Mercies sake, O thou most merciful.*

A. I say *Amen* to that *Petition*; and do at the same time pay my thanks to *Heaven* for that one doth *bear rule* over me, in whose great *Genius* *Justice* and *Mercy* do appear to the World as the same thing: and whose *Justice* when ever any one shall come to Paint in Story, he will not need to do it in the way of a *half-face* to hide any *defect* of *Mercy*: and wherein if any Prince be deficient, his *Historian* will be put to do it in the way I mention'd; and as *Pliny* tells us, *Appelles* drawing the Face of a King who had but one Eye, and intending to conceal that defect, was put upon the Painting him turning his Visage a little away, and so shewing but the one side of his Face: and from whence *Pliny* makes the *Invention* of that way of *Painting* to have come.

But as I have now represented *Justice* and *Mercy* to you to be the same thing, so at some other meeting I shall shew you that *Dispensation* and *Mercy* are the same: And in the mean while I shall tell you that there was a time namely throughout the Reign of Queen *Elizabeth*, and in part of the Reign of King *James* the First, when the Learning about *Dispensations* was not in *England*, Dark *learning*, but generally understood, and that not only by the Writers of the *Church* of *England*, but by the *Puritan* Writers: and I shall shew you when this *learning* went to sleep, and which I account not to have been again awaken'd till in the Conjuncture of *Thomas* and *Sorrel*'s Case. But when I come to entertain you with the learned *Notions* about it out of some of our *Church of* England-*Writers*, I believe you will not in the least *startle* at the thoughts of your Prince's *dispensing* with *disability*.

One of those Writers writ of the Subject before *Suarez*, and whose Book I suppose that our Excellent Bishop *Taylor* happen'd not to have read, because I met with no references to it in his *Ductor dubitantium*, and where probably there had been many, had the *Bishop* read it. The *Book* speaks the *Author* to have been profoundly knowing in the *Civil* and *Canon* Law, and not unacquainted with the *Lex terræ*, and one who (I think) made a great *figure* in the Administration of the *Discipline* of the *Church* of *England*, and whose great *talents* might probably cause our great *Church-men* then to engage him for their *Champion* against some of the *Puritan* Writers, who look'd with an *evil* eye on the Regal *dispensing* with disability or *incapacity* in many of our Clergy-men. And as when of old some of the *English*-understandings were employ'd in the writing of *School-Divinity*, they penetrated as far into the Subtleties of it as those of any Nation, so I may tell you that (in my poor opinion) that *Author* hath writ of the Learning of *Dispensations* both with all the *subtlety* and *solidity* requisite, and more substantially then *Suarez*. I shall lay the Book before you at our next meeting, but shall now tell you, that as to some Points we have been discoursing, he observes that *There is a Dispensation call'd of Justice, as it were, an Interpretation or Declaration of the true meaning of the Law* juxta æquum & bonum: *and he cites the Canon Law to prove that Dispensation is a due, for that the Precept of Mercy is common to all.* And I may tell you here, that if you will look on your *Durand*'s *Speculum* in his first *Volume*, where he writes so copiously of *Dispensing*, his *style* is, *Dispensatio sive misericordia.*

A. You have taken care enough to make my entertainment in this meeting end with an appetite for another; and the rather for that nothing

is more pleasant to me then to find an *Historical* account of the *Progress* of any Controverted Point of any *learning* that hath made a *ferment* in Church or State. And tho as the course of Providence hath made the *knowledge* of this *learning* to be the *opus diei*, and so the Ignorance of some, and Malice of others hath made it look'd on as *angry* work, and as *frightful* as a *Comet*, and as odious as if it were to bring us under a *torrid* Zone, yet (I think) your having surrounded the *Nature* of *Dispensation*, with such mild and gentle *Rays* as to represent it to be of the nature of the *Sol justitiæ* with *healing* in its *wings*, must needs engage the knowing to bid it welcom with a χαῖρε φῶς, and make all their animosities and ferments about it to be soon over.

B. Truly I do not suppose that any *knowing* man can have an aversion against it, and that this Learning *non habet inimicum nisi ignorantem.*

And that you may continue in your judgment of any *ferment* about the *Dispensative* Power being soon over, I can refer you to another *Judgment of Parliament*, wherein a great tenderness for this branch of *Prerogative* is shewn, namely in the **Statute of Octavo Elizabethæ, c. 6.** and to which that Excellent and Learned Person, and great Ornament of the Law, Sir *Robert Atkins* (as you will find it in *Keble*, Vol. 3.) referring in his *Argument* in **Thomas and Sorrell's Case** saith, **8. Eliz. cap. 6.** *takes notice of Licence to dispense with such Laws as were* pro bono publico; *yet doth not forbid it, but rather compounds the matter.*

It hath been the luck of *Dispensation* to meet with an ill name from some of our famous *Writers*, who tell us that there were no such things as *Dispensation* or *Non-obstante* heard of till they came from *Rome* here in the *year* of our Lord 1240. *and that afterward Kings learn'd from Popes to dispense with their Laws, whereas before they caus'd their Laws to be observ'd like those of the* Medes *and* Persians; as the *Irish Reports* tell you in the *Case* of *Commendams*, and whereupon Mr. *Prynne* on the *Fourth Part of the Institutes*, c. 22. treating largely of *Non-obstantes* calls them *Papal Engines.* And our old *Monkish* Writers have been quoted for bestowing the terms of *legum vulnera*, *infames nuncii*, and *repagalum*, &c. on *Dispensations* and *Non-obstantes.*

But I shall at our meeting again shew you that the practice of *Dispensing* may easily be traced to the *Imperial* Laws: and this you may soon find, if you will look on Dr. *Donne*'s *Pseudo-Martyr* that you have by you, and where you may guess at the age of *Dispensations*, by his referring you in *p.* 40. to the *Divinæ Indulgentiæ*, in the *Digests*, and his telling you out of the *Code* that *Theodosius* and *Valentinian making a Law with a* Non-obstante *did præclude all Dispensations which the Emperors themselves might grant, in these words*, Si cœleste proferatur oraculum, aut divina pragmatica Sanctio.

And if you will look on *Gothofred*'s Notes on the *L. Jubemus. C. De Sacrosanctis Ecclesiis & de rebus & Privilegiis earum*, cited by the Doctor there, you will thus find it in those *Notes: Cœleste oraculum quid est? Principis dispensatio.*

There is another thing I have not had time now to Discourse with you about, and that is of the *Nature* of Laws *in terrorem*, as I intended, and which suitably to the Wisdom of a Father in menacing a Child with cutting off his Head if he doth this or that thing, are by the *Pater Patriæ* and the Estates of the Realm sometimes lawfully made to *intimidate* men grown childish and vain, by Sanctions of Punishments not intended to be executed according to the general *tenour* of such *Laws*. But as what may make for my purpose of shewing you how worthy it is of the *Majesty* of *Princes*

to incorporate *Mercy* with *Justice* in *dispensing* with many particular Persons, and even to the freeing them from the *terror* of *those* Laws in some angry Conjunctures when others were to be affrighted with them, I shall refer you to King *James* his *Proclamation* of *June* the 10*th*, in the *year* 1606. and where having mentioned the Religion of the Roman-Catholicks, he saith, We desire still to make it appear in the whole Course of of our Government, that we are far from accounting all those Subjects Disloyal that are that way affected, and that we do DISTINGUISH of such as be carry'd only with blind Zeal, and such as sin out of Presumption, &c. and therefore as after times must give us tryal of ALL mens behaviour, so must all men expect that their own deserts must be the only measure of their Fortunes at our hands either one way or other: and having before spoke of the Gun-Powder Treason, and the *Doctrines* of some *Priests* that might encourage it, and said that *thereby there is sufficient Cause to justifie the Proceedings of us and our said Parliament in the making and execution of these last and all other former Statutes tending to the same end*, it followeth, nevertheless seeing the Soveraign Care appertains to us who have the Soveraign Power of Justice in our hand, and the Supreme Dispensation of Clemency and Moderation of the Severity of our Laws is likewise as proper to us to use, whensoever we shall find it reasonable, the same deserving to be no less allow'd in us (being in our Dominions God's Lieutenant) then it is prais'd in him among whose highest titles it is that his Mercy is above all his Works, &c.

The *King* in the *beginning* of his *Proclamation* having profess'd his *Zeal* for the *Religion* of the *Church* of *England* by Law *Establish'd*, and his *constant Resolution for the maintenance and defence thereof*, said, Of which our purpose and determination, beside all other our former proceedings (since our Entry into this Kingdom) we have given a new and certain Demonstration by such two Acts as have been passed in this Session of our Parliament, both tending to prevent the Dangers and diminish the number of those who adhering to the Profession of the Church of Rome, are blindly led (together with the Superstition of their Religion) both into some points of Doctrine which cannot consist with the Loyalty of Subjects toward their Prince, and oft-times into direct actions of Conspiracies and Conjurations against the State wherein they live, as hath most notoriously appear'd by the late most horrible and almost incredible Conjuration, &c. The *two Acts* there referr'd to are those that you will find in your *Statute-Book*, Anno tertio Jacobi Regis, *cap.* 4. *An Act for the Discovering and repressing Popish Recusants* (and in which the Oath of Allegiance is contain'd) and *Cap.* 5. *An Act to prevent and avoid dangers by Popish Recusants*, and whereby Popish Recusants Convict are *disabled* from bearing *Office*. But here you see how that wise Prince so soon after so horrid a real *Plot* did by *distinguishing* in his *Proclamation* between the *Principles* of *some* Roman-Catholicks and *others* as to Loyalty, and alluring the Loyal by the avow'd *Dispensative* Power of his *Mercy*, and hiding them under the *wings* of his *Mercy* from the *terror* of his Laws and affording to *all his Subjects* who should afterward *behave* themselves *well*, a *Tabula post naufragium* as to the *expectance* of making up their *fortunes*, think himself obliged then to cause *his Moderation to be known to all men.*

And you may hence take occasion when you think of the many *Acts in terrorem* in the *Statute-Book*, and where there is no *Proportion* between the *Crime* and the *Punishment*, and in some that *seem* inflictive of Punish-

ments

ments in the *Case* where men cannot be to any but the *Searcher* of hearts known to be *Criminal* at all (as for example in their owning some *Problematick* Points of the Christian Religion) to consider that most probably the *Wisdom* of the *Government* would not have pass'd them but on the *Supposition* of the *Regal* Power of *dispensing* therein, *expressly* or *tacitly*. You see how the *Laws* commonly call'd *Sanguinary*, have been tacitly *suspended*: and I may tell you, that tho I desire to live no longer then I shall be a *maintainer* of the *internal Communion* due from all *Christians* to all *Christians* as a *part* of that *Holiness without which no man shall see God*; yet I should soon *withdraw* from the *external Communion* of the *Church* of *England*, if it own'd the justness of such *Laws* otherwise then as *in terrorem*, and if it owned the *lawfulness* of putting men to Death for the *Profession* of any *Religionary* Principles, their *liberty* to profess which was *purchased* for them by the *Blood* of their Redeemer. But I need not say more now about cautioning you or any one against the taking offence at any of our Laws, Laws, through want of *considering* which of them were designedly made for *terror*.

I might here likewise as to many *Acts* about *Trade* that swell the *Statute-Book* apply the Consideration of the Regal Power of *dispensing* therein having encouraged our *Ancestors* to perpetuate them as Laws.

A. The truth is you now put me in mind how I having long ago spent much time in considering the *Trade* and *Traffick* of our Country, and of other Parts of *Christendom*, and finding that shortly after His late *Majesty*'s Restoration, one of his *Ministers* had in a Publick *Speech* intimated it to the *Parliament*, that *His Majesty had setled a Councel of Trade, consisting of some of the Lords of his Privy Councel, and of some Gentlemen of Quality and Experience, and of some Principal Merchants of the Principal Companies*, I had the curiosity to look over their *Journals* and their *Advices*, and *Reports* to the King, and there I found somewhat of the same *notion* with yours in one of their *Reports* to His Majesty. For there in one of their Papers of *Advice* addressed to the King, taking notice that what they conceived fit to be done for the *advancement* of the *Trade* of the *Realm*, was *Prohibited* by *divers* ancient *Statutes*, they make them *imply* that the thing might be done by the King's *licence* or *dispensing*, and whereupon they thus go on: *And therefore finding this Dispensation to be your Majesty's Prerogative preserv'd entire to the Crown through so many of your Royal Progenitors, we have not thought fit to touch further upon this Matter, as being humbly confident that your Majesty's Subjects shall upon all occasions be indulged the like, if not more ready relief and accommodation for their Trade from your Majesty's Royal Grace and Bounty: only because the Observation was obvious, that perhaps all former Parliaments purposely left this door open to the People by the Grace of the King to be reliev'd with those dispensations, as foreseeing how difficult, if not impossible, or how inconvenient at least it might be altogether to restrain* what those *Statutes* prohibited, *we could not omit the same in this place*, &c.

B. And you have put me in mind how a very Loyal and judicious *Gentleman* of that *Councel* of *Trade*, (and whom I look on to be as deeply *study'd* in the business of Trade and Traffick as any one of the age) was pleas'd once to give me his opinion in Discourse, that a *vast* number of our *Statutes* made for the *advancement* of *Trade* did really *depress* it; and he then told me, that the making of one new *Law* against the giving *Alms* to *Beggars* in the High-way, would enrich the Nation almost more then all our *old* Statutes.

A. I have many times been apt to think so. And considering how great a part of Mankind every where the *Credulous* are, and that the *Beggars*

are

are a neceſſary *Tax* upon the *Credulous*; as we muſt imagine that a great *loſs* happens to the well-meaning People in the Nation through the *Profuſion* of their Charity to *Paupers* in the High-ways or Streets, ſo again conſidering the vaſt *numbers* of ſuch *Paupers*, and how valuable their *Induſtry* would be to the Publick, if *Neceſſity the mother of Induſtry* through their not being relieved in the High-ways or Streets made them advantageous to the Kingdom inſtead of being *Nuiſances* to it, one may eaſily gueſs that an *Act* of *Parliament* of that Nature would awaken Trade and Manufacture to a much higher Proportion than our many ſleeping *Statutes* can do.

B. Why, then; I muſt tell you what I told him, namely, that there is ſuch a *Statute* in *being*, and long ago made, and that the *execution* of this *Statute* hath been in the populous *Suburbs* of our *Metropolis* (the places where Beggars do ſo much ſwarm) often awaken'd within theſe *late* years by the *Middleſex-Juſtices* cauſing *Printed* Papers to be ſent to the *Church-wardens* and *Overſeers* of the *Poor* in the reſpective Pariſhes, and with this *Clauſe* therein inſerted, *viz. And for the diſcouragement of all idle Vagabonds and Vagrants*, &c. *all Perſons are hereby deſired and required to forbear to relieve any Beggars at their doors, or in any other kind about the Streets, on pain of ſuffering the reſpective Penalties by Law provided againſt all ſuch Offenders.*

A. I never before heard of this *Penal* Law.

B. You may find it *referr'd* to, and likewiſe what may ſhew you how it hath been *tacitly* diſpenſed with, in my Lord *Hatton's Treatiſe of Acts of Parliament and the Expoſition thereof*, c. 5. *Of Interpretation of Statutes by Equity*: and where he ſaith, *The Statute of* E. 3. *ordaineth, That no man upon pain of Impriſonment ſhould give Alms to a valiant Beggar. Yet if one meet with ſuch a one in ſo cold weather and ſo light apparel, that if he have no Clothes given him he ſhall die before he comes to any Town, if a man giveth him apparel, he offends not the Law. For there is an inward diſpenſation by the bond of Chriſtian Charity and Compaſſion.*

But ſince *humane* Laws *bind* the *Conſcience*, we cannot without the *Prince's* tacit *Conſent* rationally to be *preſumed*, thus give our ſelves the *Latitude* of an *internal diſpenſation*, or *relaxation* from the *band* of that his Law: So that therefore when ever you *gratifie* your own indulgent diſpoſition in *relieving* one in the Streets, or *in itinere* whom you look on as one of *God's* Poor, you are at the ſame time to be ſenſible of the Regal *diſpenſative* Power *relieving* your *Conſcience*, and *legitimating* that your intended Charity by *Tacit* Diſpenſation.

A. You have often *referr'd* my Thoughts to conſider the Nature of the Prince's *Tacit* diſpenſing. Do you account it to have any great ſpreading *Influence* on mens *Conſciences* here in keeping them both *innocent* and *quiet*?

B. When we meet ſome other time, I ſhall ſhew you the *Univerſal* influence of this kind it hath among all *Orders* and *Degrees* of our Prince's *Subjects*: and I ſhall then give you a full view of it.

A. But will you then tell me of *Diſability* being thus *tacitly* diſpens'd with, and with a *ſalvo* to Conſcience as to the *obligation* of *humane* Laws?

B. Yes; in many Caſes. I have told you of one already when the Roman-Catholick *Phyſicians* were *diſabled* by an *Act* of *Parliament* in the Reign of King *James* the Firſt from Practiſing, and when the Regal *Tacit* Diſpenſation proved an effectual Antidote to their Conſciences againſt mortal Sin in the Caſe. But becauſe you ſeem to be ſomewhat *impatient* to know another *Caſe* wherein the *Tacit* Diſpenſation with *diſability* did thus *operate*, I ſhall give you a *home-caſe*, by deſiring you to recollect how *old* you were

when

when you were first chosen a Parliament man, and then to read Mr. *Prynne's* Book publish'd *A.* 1661. and call'd *Minors no Senators, or a brief Discourse proving Infants under* 21 *years to be uncapable in point of Law*, &c. *of being elected or admitted Members of the High Court of Parliament*, &c. He refers there to *Coke's Institutes* for rendring none *eligible* to be a *Knight, Citizen* or *Burgess*, who is under the *age* of 21 *years*: and in *p.* 5. he saith, *the Common Law of* England *is so exact and curious in the Election of all Officers of an inferior Nature, as Coroners, Verderors, Keepers of Seals for Recognisances, or Statutes Merchant, Constables, Bailiffs, Mayors, Clerks and others, who are eligible by Writs, Charters or Prescription, that it expressly requires every one of them to be* idoneum hominem qui melius sciat & possit officium illud intendere, *and therefore* (saith he) *much less ought a Minor to be chosen a Knight, Citizen, or Burgess*, &c. *and if he is unable to be an Attorney or Proxy to assent for another in any Court of Justice, much more then in a Parliament, the supremest Court.* And in *p.* 24. to the *Objection* that *some Infants under* 21 *years have been permitted to sit in former Parliaments*, he answers, *that none ever sate in former Parliaments but only by Connivence, and whose Elections were never question'd, and that some whose Elections were question'd, were ejected.*

And now as Bishop *Sanderson* in his 7th *Lecture*, viz. *De Legum humanarum Causâ efficiente*, speaking of *Laws ceasing to oblige by contrary Custom*, makes that contrary Custom to be *nihil aliud quam Conjuncta populi Consensio eam legem ut inutilem observare negligentis, & Consensio principis Observationem ejus non exigentis*; and in his 10th *Lecture* doth very judiciously distinguish the Prince's *Consent* about relaxing Subjects from the obligation of a Law into *that which is express'd*, and *that which may rationally be presumed*, it was by this *latter* consent of your *Prince* so exuberantly indulgent in his Nature, that you were brought off from *Sin* in the *forum internum*, when you were both *Senator* and *Minor*, and when you help'd on the making of Laws to *disable* others, and who have since made it a *question* whether the King could *expressly* or *tacitly* dispense with the *incapacity* that by means of your Vote, and perhaps of other *Minors*, passed to be *enacted* as a Punishment.

But to speak frankly, you will oblige me now we are so near parting, to tell me of any one learned Man in the Profession of the Laws of any part of Christendom, and particularly of our own *Municipal* ones, who hath *ex Professo* and *argumentatively* writ of the Prince's *Prerogative* of *dispensing* with a Penal *disability* in *particular* Cases, and deny'd it.

A. I did not as to our *Lex terræ* account it *tanti* to set up the Judgment of any one particular man when you have entertain'd me with *Judgment* of *Parliament* in the Case. But I am sure you cannot but know how that great Man in that great *Case* we have referr'd to, I mean my Lord Chief Justice *Vaughan* in *Thomas* and *Sorrel's* Case, seems to be of opinion that the *King* cannot *dispense* in the *Case* of *Incapacity*: He saith, *the reason why the King cannot dispense in the Cases of buying Offices and Simoniacal Presentations is because the Persons were made incapable to hold them: And a Person incapable is as a dead Person, and no Person at all as to that wherein he is incapable*, &c.

B. Tho that *great* Man hath not therein as in other *Passages* in his *Argument*, discuss'd the Point *argumentatively*, I shall yet pay so much respect to his opinion, as to give decent Burial to his *dead Man.* But you see that after he had said, *The Reason why the King cannot dispense*, &c. *is because the Persons were made incapable to hold them*, he only gives it as a *reason* of their being *uncapable*, and of the King's not being able to *dispense* in their

Caſe, *viz.* that they are dead Men, *that a Perſon uncapable is as a dead Perſon*, and whereby he giveth us a Magiſterial *gratis dictum*, or a *Petitio Principii* inſtead of what might deſerve the *name* of a *Reaſon*, or what might prove that the *King* could not *diſpenſe* in the *Caſe* of one *Politically* dead, or one *dead* in *Law*. I have formerly told you of the *Saying* uſed by *Magerus*, and other *Civil Law-writers*, that *Mors civilis naturali non æquiparatur niſi in caſibus in jure expreſſis*. And there are Caſes enow expreſs'd there, that ſhew how the Prince who is according to the ſtyle of *Seneca*, viz. *Animus Reipublicæ, illa Corpus ſuum*, and *ille ſpiritus vitalis quem hæc tot millia trahunt*, and who in the *Scripture* Phraſe is *the breath of our Noſtrils*, can according to the *Law* of the *Land* as *I* told you in the *Caſe* of Sir *Walter Raleigh*, animate a Perſon *dead* in *Law*.

And none need queſtion why King *James* the *Second* cannot thus *raiſe* the *dead* as Queen *Elizabeth* did, and King *James* the *Firſt*, or our following Princes, and I may ſay as well as any who went before him. *Infames dicuntur civiliter mortui* is a common Saying, but you ſee that *Fas eſt cuivis Principi maculoſas notas vitiatæ opinionis abſtergere* is as common. Thus too *Magerus* tells us, that *Banniti pro mortuis reputantur*, and we know that the *Excommunicate* may in ſome reſpect by reaſon of their temporary *diſability* be termed ſo too.

And if you will look on the Book call'd *Reformatio legum Eccleſiaſticarum*, under the title *De excommunicatione*, you will there in the *Chapter* of the *Denunciation of the Excommunicate*, find the *Miniſter* enjoin'd to *tell* the *People that they muſt all abſtain from the Excommunicate Perſon*, tanquam à Putri & Projecto membro, *&c. that an Excommunicate Perſon is to be thrown out of the Church as a dead Carcaſs*: but you will there find in the *Formula reconciliationis excommunicatorum* with what tenderneſs it is ſaid *reum hunc chariſſimum fratrem membrum aſſumamus & agnoſcamus Communis in Chriſto noſtri corporis: & intimus ut noſter affectus in hoc corporis noſtri recuperato membro teſtatior ſit*, &c. and that the Paſtor in the Abſolution of that returning *Prodigal* who was *dead* and is *alive again*, muſt in the adminiſtration of the *King*'s Eccleſiaſtical *Laws*, ſay *tibi rurſus priſtinum in Eccleſiâ tuâ locum, & plenum jus reſtituo*.

Thus too at the *end* of the *Canons*, A. 1571. you will find the ſame *ſtyle* of *tenderneſs* in *Vogue* in Queen *Elizabeth*'s time that was in *Edward* the *6th*'s, as likewiſe of the powerfulneſs in *raiſing* the *dead*. You ſee there a Form of the *Sentence* of *Excommunication*, viz. *Fratres quoniam quicunque profitemur nomen Chriſti ſumus omnes membrum ejuſdem corporis, & par eſt ut unum membrum alterius membri ſenſu & dolore afficiatur*, &c. And it being afterward mention'd, that *the Perſon having been accuſed of ſuch a Crime, and having been contumaciouſly abſent*, it followeth, *the Biſhop in God's Name and by his Authority hath Excommunicated ſuch a one from the Society of Chriſt's Church*, & tanquam membrum emortuum amputaſſe à Chriſti corpore, &c. *that you may ſhun his Company*: tamen ut Chriſtiana charitas nos monet, *let us pray for him to God who is a merciful God, and who can* lapſos etiam à morte revocare.

And you may take notice of what is ſaid in *Croke* 2d, and *Coke* 8th *Report*, *Trollop*'s *Caſe* about the King's *Pardon* raiſing the *Excommunicate* from this *civil* death, and that a man need not be *Abſolved* by the *Church* if the King *Pardons*. And thus *Hobart*, *Serle*'s Caſe, *p.* 294. ſhews you that after the *diſcharge* of a *Clerk Convict*, he ſhall never be *queſtion'd* in the *Eccleſiaſtical* Court for *deprivation*. You may likewiſe ſee it in *Coke* Inſt. 3. Chapter *Of Pardons*, The *King* may *Pardon* one *Convict* of *Hereſie*, or of any other offence *Puniſhable* by the *Eccleſiaſtical* Law. You

You may too in that *Chapter* obſerve his tenderneſs for *Prerogative*, where having mention'd that *by the 13th of* R. 2. *it is provided that no Charter of Pardon for Murther*, &c. *ſhall be allow'd*, &c. *if they be not ſpecify'd in the ſame Charter, and that before that Statute by the Pardon of all Felonies, Treaſon was Pardon'd, and ſo was Murder; and at this day by the pardon of all Felonies, the death of a Man is not pardon'd*; he thus goeth on, *theſe are excellent Laws for direction, and for the Peace of the Realm. But it hath been conceiv'd (which we will not queſtion) that the King may DISPENSE with theſe Laws by a* Non-obſtante, *be it general or ſpecial (albeit we find not any ſuch Clauſes of* Non-obſtante *but of late times) Theſe Statutes are excellent Inſtructions for a Religious and Prudent King to follow*, but he doth not make them *obligatory* to him. My Lord *Coke* then ſaith, *This is to be added that the intention of the ſaid Act*, 13. R. 2. *was not that the King ſhould grant a Pardon of Murther by expreſs Name in the Charter, but becauſe the whole Parliament conceiv'd that he would never Pardon Murther by ſpecial Name for the Cauſes aforeſaid, therefore was that Proviſion made which was grounded on the Law of God*, Quicunque effuderit humanum Sanguinem, fundetur Sanguis illius, &c. Nec aliter expiari poteſt, niſi per ejus Sanguinem qui alterius Sanguinem effuderit. *His Margin* there cites *Geneſ.* 9. 6. *Numb.* 35. 33.

A. But (by the way) do you think then that Sovereign Princes offend the *Law* of *God* in *Pardoning* Murther?

B. I do obſerve that many *preſume* to cenſure *Kings* for ſo doing, and are ſuperſtitiouſly miſguided by thinking that thoſe two places of *Scripture* referr'd to by my Lord *Coke* do neceſſarily make it a ſin in Princes to *Pardon* Murther. But I ſhall when we meet again ſhew you the *miſtake* of ſuch therein; and ſhall ſhew you that *David* at that time when the *Law* of *God*, and the *lex terræ* was the ſame thing, (and *who had Sworn and would perform it, that he would keep God's righteous Judgments*) was not to be cenſured to have *ſinned* either in the *reprieve* of *Joab* who had murthered *Amaſa*, and *Abner*, and in delaying the *Execution* of the *Law*, and leaving it to *Solomon* his Son, or in the Pardon of *Abſolon*, who had ſlain his Brother *Ammon*: and that when the *Law* ſaith in *Numb.* 35. *The Murtherer ſhall ſurely be put to death*, our beſt *Commentators* (and out of the *Rabbins*) ſay, that this is ſpoken to the *Judges* before whom ſuch *Cauſes* regularly came, and under the *Supreme* Power and by authority thereof judged thoſe Cauſes; and that tho the *Judges* who were *ſubordinate* to the *Supreme* Power were *to take no Satisfaction for the life of a Murtherer*, but were by that *Law* to Condemn him, yet that it followeth not that the *Supreme* Power who made them *Judges*, might not in ſome Caſes *Reprieve* and *Pardon* ſome whom they had Condemned.

A. I ſhall be glad to hear you diſcourſe of this, and the rather for that 'tis ſo Cuſtomary to many when they find the *Prince* exerciſing this *Prerogative* of *Pardoning*, to be apt too much to buſy their heads with thoſe *two* places in the *Old* Teſtament, to their neglect of others there, *viz. Exod.* 22. 28. *Prov.* 24. 21. *Eccleſ.* 10. 20. and of *Acts* 23. 5. in the *New*, and likewiſe there of *Rom.* 13. 2. 5. 1. St. *Peter* 2. 17. and from whence they might Collect their moral offices of not *doing*, or *ſpeaking*, or *thinking* diſhonourably of the Lord's annointed, and of paying *honour* and obedience to his Sovereign Power, and that for *Conſcience* ſake.

But in the mean time give me leave *à propos* to ask you if ever you heard of any one of the *Judges* of the Realm in the Reign of our former Princes, that gave his judgment for the allowance of the King's *Pardon* of *diſability*? Shew me but that, and I ſhall not be *affrighted* with my Lord Ch. Juſtice *Vaughan*'s Simoniacal *Dead man*.

B. I ſhall tell you of a *Caſe* that was well enough known to him, and which you may find in *Croke* 3d, *p.* 55. Sir *John Bennet*, v. Dr. *Eaſedale*: where you may ſee that Sir *John Bennet* being *fined* 20000 *l.* for *Bribery*, by the *Star-Chamber*, and *Cenſured to be Impriſon'd, and made uncapable of any Office of Judicature: and that he having a Pardon from the King reciting the Bribery and Offences mention'd in the Decree, and all Penalties and Puniſhments by reaſon thereof, and all Diſabilities and Incapacities, and all things concerning the ſaid Sentence except the Fine of* 20000 l. and the *Court of Star-Chamber having the advice of all the Judges relating to the Decree and Pardon, it was reſolv'd by them all, that this Pardon hath taken away all force of the Sentence in the Star-Chamber, except for the Fine of* 20000 l. *and all Diſabilities are diſcharged thereby.*

That *Lord Chief Juſtice* knew that (as it was ſet down in that *Chapter* of *Pardons*, Inſt. 3.) the *King's Pardon* extends to all *Suits* in the *Star-Chamber*: and he knew of what was mention'd, *Inſt.* 4. *Chap.* 1. *Of the High Court of Parliament*, viz. *Of a Pardon to the Lord* Latimer *of a Judgment in Parliament:* and he knew that by his own and other *Juſtices* of *Aſſize* going into their *own* Countrys in the *Execution* of their *Offices* by vertue of the King's *Non-obſtante* to the *Statutes* of 8. *R.* 2. c. 2. 3. *H.* 8. c. 24. himſelf and as many as went *Judges* of *Aſſize* ſo into their *own* Countrys, gave Judgment by ſo doing for the *Prerogative* of *diſpenſing* with ſuch *Acts* of *Parliament:* and he likewiſe knew that (as it is well expreſs'd in *The Anſwer of King* Charles *the Firſt to the Declaration of both Houſes of Parliament concerning the Commiſſion of array*, A. 1642.) *An Act of Parliament in any Matter tho miſtaken, being aſſented to by the King and his two Houſes, is equally binding (as having equal Authority) with an Act introductive of a new Law*, and that therefore *Acts* of *Parliament* having ſo particularly *declared* the juſtneſs of the Prerogative's *diſpenſing* with *diſability*, no *magna nomina* of any particular *Sages* of the *Law* in otherwiſe *opining*, can expect any deference.

And if you will conſider what my Lord *Coke* in that *Chapter of Pardons* hath mention'd of the operation of *Prerogative* over the *dead in Law*, and conſider the *Preſident* he refers to, *viz. Paſch.* 22. *E.* 3. *tit. Cor.* 239. *Coram Rege, Quidam indictatus de Felonia, & inde Culp. dicit quod Rex eum Conduxit, & inde producit Chartam, quod Rex eum Conduxit in Vaſc. in exercitu, & dicta Charta allocata fuit per Curiam*; and there ſee his opinion grounded on it, that *if a man be Indicted of Felony, and found Guilty, and being in Priſon, the King may under the Great Seal, reciting the Offence*, &c. *retain him to ſerve in his Wars on this ſide or beyond the Seas: this Charter he may Plead, and the Court ought to allow it*; I believe you will be of *Opinion* that any one who will deſire any more *Preſidents* for the Commanding the ſervices of *dead men* ought to be ſent for one to the *REHEARSAL*, viz. that of *Ariſe you dead Men, and get ye about your buſineſs.*

A. Well Sir: As for this *objected* Dead-man, *requieſcat in Pace.* I have done with him: and ſince from ſome things you have ſaid, I gather that the *diſpenſing* with *diſability* by *Roman* Emperors and *Popes* of *Rome*, did never by any *ferment* diſturb their Governments; and moreover, ſince no men of ſenſe here have ever troubled themſelves or the Government with any vexatious *Queſtion* about the King's Power in diſcharging a man from a *Præmunire*, but not from a Penal *diſability* incurr'd, whereas by *a Præmunire* (as my Lord *Coke* ſhews us, *Inſt.* 3. c. 54.) *men are put out of the Protection of the King, and DISABLED to have any Action or Remedy by the King's Law or the Kings Writs*, and expoſed to many other dread-

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ſul *Puniſhments*: I do now begin to wonder whence it is that the miſtake in ſome mens Minds hath come about a *Penal* diſability being ſo unremoveable. And thus I think too one might wonder how ſuch as will allow the King's *Pardon* to diſcharge one from an *Excommunicatio minor* or *major*, do look on *diſability* as ſuch an *anathematizing* thing as is not to be touch'd or that cannot be quell'd by Prerogative. Can you gueſs whence it is that men have imbibed this miſtaken fancy?

B. I ſhall frankly tell you what I think hath occaſion'd it. It is moſt natural to all men in arguing to take the ſhorteſt courſe they can to bring their Adverſaries to what is reputed by all to be an *abſurdity*; and there being ſome *Diſabilities* that the *Law-Books* mention wherein *Property* is concern'd, and wherein it appears as an *abſurd* thing in any one who ſhould ſay that they could be *diſpens'd* with, and as for Example, what the Νομολέξικον tells us of *Diſability*, *where a man is not of whole Memory, which diſables him ſo that his Heir ſhall take advantage of his Diſability after his death: and where he paſſeth any Eſtate out of him it may be after his death diſanull'd by his Heir, and which cannot be diſanull'd by himſelf during his life. For it is a Maxim of Law, That a man of full Age ſhall never be receiv'd to diſable his own Perſon:* and for which he cites Sir *E. Coke*. And he had before ſpoke of *Diſability by the Perſons own Act, which is, if I bind my ſelf that upon ſurrender of a Leaſe, I will grant a new Eſtate to the Leſſee, and afterward I grant over my reverſion, in this Caſe tho I afterward repurchaſe the reverſion, yet I have forfeited my Obligation becauſe I was once diſabled to perform it*, Coke *lib.* 5. *f.* 21.

Thus likewiſe it appearing to be againſt *reaſon* that men ſhould be made *Judges* who are under *natural* incapacities to exerciſe Juriſdiction, (and ſuch as *Vantius* in his *Book* de *Nullitatibus* inſtancing in, as, *Surdus, mutus, perpetuò furioſus, impubes*, ſaith, that *quoniam defectus & incapacitas iſtorum à naturâ ipsâ provenit, ideo à quoquam etiam Supremo Principe ſuppleri non poterit (quia etiam Imperatori tollere non licet quæ juris naturalis ſunt)* an aſſerting of the Power of *Prerogative* in *diſpenſing* with ſuch incapacity would be *abſurd*; and it would ſhew ſomewhat of *læſa Principia* and of *natural defects and incapacities* in one who did rear *Suppoſitions* of a *Prince's* intending to employ ſuch *Uncapables*: and however nothing appearing to the firſt thought more *ridiculous* then a *diſpenſing* with incapacity of this kind, many may be ſo apt to think that incapacities *enacted* by Penal poſitive Laws, (and by ſuch Laws perhaps as were made *in terrorem*) cannot be *diſpenſed* with.

But *in fine*, when we meet hereafter, I ſhall give occaſion to both our thoughts for a higher flight, then they had in that poor low *Queſtion, Can the King diſpenſe with Penal Diſability?* and I ſhall ſhew you that where the *King* can as to any particular man *relax* the *bond* of his *Law*, let the moſt penetrating Wiſdom of *Men* or *Angels* be employ'd in the ſettlement and *invention* of the moſt terrible *Penalties* to guard the Law, the Perſon ſo *diſpens'd* with is *ipſo facto* and *ipſo jure* freed from them all. He by being *exempted* from the *Obligation* of that Law is as *innocent* and free from any *Sin* by the *tranſgreſſion* of it, as the *Child* unborn. The *Diſpenſation* hath intercepted all the *Penalties*; hath *abſolv'd* him *à culpâ*, and therefore *à pœna*, and if you puniſh him, you puniſh an *innocent* Perſon.

A. You will then make a happy riddance of the *vexata quæſtio* of *diſability*, if you have not done it already.

B. But now Sir. by *WAY* of *RECOLLECTION* as to what hath *paſs'd* between us, either at this Conference or the other; if any thing occurs to your thoughts, by me either *obſcurely* ſpoken (and which you would wiſh

better *illuſtrated*) or what may *ſeem* in the leaſt to *reflect* on our *Laws*, or on the *Religion* of the *Church* of *England* by *Law eſtabliſh'd*, I do moſt earneſtly conjure you now to name it to me. It is poſſible that for a Month or two's time, we may not meet again, and therefore I ſhall be glad that our parting now may be without any *offence* given or *taken*, as to any of theſe Matters premiſed, and in order to which, that while what hath paſſed between us is freſh in both our Memories, any miſunderſtanding therein may be prevented. And *I* yet further give you the liberty in caſe any thing of the nature aforeſaid, or of what nature ſoever ſhall occur to your thoughts after we are parted which we have diſcourſed of, and which you would wiſh better conſider'd, that you would when we meet again freely impart it to me, and when if you can ſhew me that *I* in any thing have erred, *I* ſhall ſhew you my readineſs not to perſevere therein, and ſo we ſhall be both *gainers*, you will *gain* the *Victory* and *I* the *Truth*.

A. I am ſure I cannot oblige you more then by making uſe of the freedom you have offered me, as I ſhould find occaſion ſo to do: and for which at preſent I find but little. I was during our Diſcourſe of the *Interpretation* of the *Oath* of *Supremacy* afraid that you would have left ſome great words in it that relate to *no Foreign Prince or I relate having any Juriſdiction here Eccleſiaſtical or Spiritual*, &c. under ſome clouds of doubtfulneſs, and thereby have ſeem'd to derogate from the *honour* of the *Oath*, till I found that you both aſſerted the honour of the *Oath* and of the *Government* too by ſhewing it from the *Sentiments* of my Lord Primate *Bramhal*, and otherwiſe that *Coactive Juriſdiction* was thereby only meant.

B. I muſt caution you with a *Nota bene* to *keep* in your *mind* what I have both poſitively and argumentatively told you in obviating your ſcruples about the *Oath*, and of the *Regal* Power of *interpreting* making the Coaſt of the *Oath* ſo *clear* to you, and how I have *ſupported* the *honour* of the *Engliſh* Conſciences of all conſiderate Perſons of the *Church* of *Rome* in *Harry* the 8*th's* time, and of the *Church* of *England* in *Edward* the 6*th's*, by ſhewing you that their *ſenſe* of the *Biſhop* of *Rome's* having here *NO Juriſdiction*, was of *no Independent Coactive Juriſdiction*, when they took the *old* Oath of *Supremacy*, and likewiſe of thoſe of the *Church* of *England*, who in Queen *Elizabeth's* time and ever ſince took the *new* one. And I need not tell you again that at the time of the making of the *Statute* of 37° of *H.* 8. and of the *Revival* of it by Queen *Eliz.* (and wherein it was *declared* that *Archbiſhops*, *Biſhops*, &c. *have NO manner of Juriſdiction Eccleſiaſtical but by, under and from His Royal Majeſty*) both *Harry* the 8*th*, and that *Queen*, and the judicious in the *Clergy* of each knew that as to their *Poteſtas Ordinis* which by virtue of their Function they have to Preach, and give the *Sacrament*, and give *Orders*, &c. it was *derived* from *Chriſt* to the *Apoſtles* and their *Succeſſors*, and that ſo likewiſe was the *Poteſtas Juriſdictionis in foro interno*, and that therefore none needed to ſuppoſe that either by *Harry* the 8*th's* Oath or Queen *Elizabeth's*, in the words of *no foreign Prelates* having here *any Juriſdiction*, &c. any Power the Pope could juſtly claim as a *Succeſſor* to the *Apoſtles* was impeach'd.

And no doubt but *Harry* the 8*th* being by that *Statute* declared to be *but a Lay-man*, no men of ſenſe conſtrued that *Statute* to give him the exerciſe of any *Juriſdiction*, or Power of the Keys *in foro interno*, as a *Succeſſor* of the *Apoſtles*. The old *Diſtinction* of *Bracton*, l. 1. c. 8. that King's cannot Excommunicate *miniſterialiter* (becauſe they are Lay-men) but may do it *authoritativè* by appointing others to do it, gave Satisfaction in *Harry* the 8*th's* time, and might had it been thought of in Queen *Elizabeth's* Reign have ſav'd the labour of the *Interpretation* in the

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Admonition in removing the *ferment* that the *Oath* occaſion'd among *Proteſtant* Scruplers.

But tho the *Preamble* of the *Admonition* referrs to ſome *Proteſtant* Clergy-men as the Scruplers, yet the following words, *viz.* That her Majeſty would that all her loving Subjects ſhould underſtand that nothing was, is, or ſhall be meant or intended by the ſame Oath, &c. ſhew her Pious deſign of *Complaiſance* as to the Conſciences of her *Catholick* as well as *Proteſtant* Subjects, and whoſe *freedom* from Impoſition of ambiguous or otherwiſe unlawful Oaths ſhe knew was purchaſed for both of them alike by the *Blood* of *Chriſt*. And you know I referr'd you to, Sir *John Winter*'s *Obſervations on the Oath of Supremacy*, as repreſenting the *Oath* by the help of Queen *Elizabeth*'s Interpretation in the *Admonition*, and of the Enacting of that *Interpretation* in *Parliament*, and of the *Interpretation* in the 37th *Article*, as *lawful* to be *taken*, tho poſſibly inexpedient on the account of *Scandal*, and likewiſe to another *Roman-Catholick* Writer, who on the account of thoſe *Interpretations*, thought it might both *lawfully* and without *Scandal* be taken. And you and others who think that *Oath* of importance for the ſecuring the Peace of the *Government*, may thank the Prerogative of Regal *Interpretation* for ſupplying the *Lamp* of it with the *Oil* that hath made it *laſt* ſo long, and which otherwiſe would ſoon have gone out in a *ſnuff*, as I ſhew'd you by the *offence* that was *taken* at it at home and abroad when it was firſt *ſet* up, and which now may perhaps help to *illuminate* the *Engliſh* World in the meaſures of Loyalty ſo long *as the Sun and Moon endure*: that is, if you ſuppoſe that the *uſe* of *Oaths* would *endure* ſo long. But, *Dii meliora*.

And it here coming into my mind that you in your ſomewhat *airy* way of diſcourſing of the Oath, reſembled it to a *tender-ſided* Ship *girdled* with ſo many interpretations, I ſhall take occaſion further to impreſs it on your thoughts, that it is ſtill *THE SAME OATH*, tho partaking of all thoſe *Interpretations*, and as we ſay of *eadem navis toties refecta*: and the ſeveral interpretations are not by you to be reſembled to *girdlings*, but to its main inward *beams* and *timbers* that are become *parts* of it. Moreover you know that a girdled Ship by reaſon of the incompactneſs of its *adventitious* parts with the other, cannot laſt the fourth part of the time that another will. But you ſee how long this *Oath* hath continued, and riding triumphantly in the *Sea* of *time*, hath too carried out all its *Guns* in Stormy weather, and made the Uſurp'd Power of the *Court* of *Rome* ſtrike Sail to our Princes.

Yet I ſhall here take occaſion from my having juſt now *minded* you of the *Interpretations* of the *Oath* inclining Sir *John Winter* and the *other* Roman-Catholick to judge of it as they did, to tell you that I have often wiſh'd that in the times of the three laſt *Reigns* the Power of *Interpretation* had further *exerted* it ſelf in the further clearing of any thing in that *Oath* and in the *Oath* of *Allegiance* at which *offence* was by ſo many *taken*, however by the *Oaths* not *given*: and that ſuch *Interpretations* had been *approved* in *Parliament*, and particularly that the *Interpretation* of the word *HERETICAL* in the *Oath* of *Allegiance*, as being meant of *Contrary to the Word of God*, had brought all our Roman-Catholick Brethren to the *taking* of that *Oath*, as I told you that *F. Creſſy* thought it would have done, and who ſaid that he believed that that was the *ſenſe* intended by King *James* in the word *heretical*.

And I ſhall be glad if thoſe *Interpretations* relating to the *Oath* of *Supremacy* which ſucceeded thoſe that Sir *John Winter* and the other *Roman-Catholick* took notice of, may in the event Conduce to render it more acceptable

table to others of them: and the rather for that it is apparent that all the *Interpretations* are *Conſiſtent* with the *Oath*, and with *one another*, as from what I have ſpoken you may Collect. But by ſo many other Pious and Learned Roman-Catholicks appearing not to be of the opinion that the *Interpretations* of the *Oath* mention'd by thoſe *two* Writers, may legitimate the taking of it, I have long wiſh'd to the *Oath* all the additional clearneſs that Law could give it, and that they would wiſh given who were required to take it. And as one *Doctor*'s opinion for the juſtneſs of a *Litigants* Cauſe hath on his being caſt in it, been allow'd to ſave him from being as a *Calumnious* and raſh *litigator* condemned in Expences, thus ſo *great a Maſter in* our *Iſrael* and *Vindicator* of our *Church* from *Schiſm*, as Archbiſhop *Bramhal* having given his *Opinion* about the *Oath* (as I told you) namely as to what related to the *King*'s Power in *Spirituals*, and to *no foreign Prelate* having any Spiritual *Juriſdiction* here, *viz. This might have been expreſs'd in words leſs liable to Exception*, I ſhall cenſure no man as a *Calumniator* of the *Oath* who ſhall wiſh that any lawful *Interpretation* may make thoſe words *leſs liable to Exception.*

Sir *John Winter* (as I told you) having mention'd *the Explanations not being known to all, and their intricacy and the conſtant tendring of the Oath for ſo many years without the aforeſaid Explanation as likely to give juſt cauſe of Scandal*, &c. I muſt tell you I like not his words of the *GIVING juſt cauſe of Scandal*; but what I have ſhew'd you of many *paſſages* about the *Explanations* which were not obſerv'd by him, and particularly of the 37th *Article* affording only to the *Clergy* a more *favourable* interpretation (and which was *enacted* as to them in 13° *Eliz.*) and of the *Canons* of King *James* firſt extending the benefit of that *Interpretation* to the *Layety*, and of the *Canons* of King *Charles* the *Firſt* further explaining the 37th *Article*, may juſtly incline you to wiſh that the ſenſe of the Oath did *Primâ facie* appear as *liquid* to all as it now doth to us two.

And I ſhall here take occaſion for the propping up the interpretation relating to the *Oath* made by thoſe *two* Princes in their *Canons*, to tell you that as you accounted King *James* his *Interpretation* as good as Queen *Elizabeth*'s, ſo you may account that in the *Canons* of King *Charles* the *Firſt*, as good as that in thoſe of King *James*; for that tho it is ſaid by ſome that the *Canons* of King *Charles* the *Firſt* were damned by the *Act* of 13° *Car.* 2. c. 12. yet the truth is, that that Act leaves them in *ſtatu quo*, and the laſt Proviſo in it doth only expreſs thoſe *Canons* not being confirm'd by it. Nor (in my judgment) did they need any *Confirmation* from it: for that (according to my Lord Chief Juſtice *Vaughan*'s Opinion that *I* have cited to you) *a lawful Canon is the Law of the Kingdom as well as an Act of Parliament*: and the Conſideration of this may ſhew you, that as Queen *Elizabeth*'s *Interpretation* in *The Admonition* was perpetuated by the Enſuing *Parliamentary* Approbation thereof, ſo the interpretations of thoſe Princes in thoſe their *Canons* confirm'd for them, their *Heirs* and *Succeſſors*, are now binding to you; and *I* pray God to incline you to *keep* this your *Solemn* Oath according to theſe *interpretations* of it.

A. I thank you for this your *ſerious* and *Chriſtian* wiſh, and do give you my hearty thanks for what you have diſcours'd to me of the many *Interpretations* relating to the *Oath*, and the rendring them ſo conſiſtent with it, and by means whereof *I* am ſenſible that the *Oath* hath become more then *res unius ætatis*, and that without them it would not have been ſo much: and by which both the *credit* of the *Oath*, and the quiet of the Conſciences of the Takers of it have been preſerv'd. And *I* am glad that the task of *enumerating* them all hath happen'd thus to fall into your hands, and that therein

therein you have not (as they ſay of young *Conjurers* raiſing *Spirits* that they cannot *lay*) occaſion'd any doubts in me about the Oath but what you have fairly and fully ſatisfy'd. And indeed you have *laid* ſome *doubts* that the *Two* Roman-Catholick *Writers* raiſing them, happen'd not to lay. Throwing therefore by any *Thoughts* and *Expreſſions* of mine of that *nature* which you cenſured as *airy* (and as to which I ſubmit to your reproof) I ſhall prepare my mind with a decent temper both of *delight* and Pious *dread* to contemplate my *Oath* as now ſet before me, and as containing in it that *clearneſs*, and that *Majeſty* that may excite both thoſe Paſſions in me, and the *real* view of which I may ſome way compare to that in viſion, *Ezekiel's terrible cryſtal.*

B. Long may you live in this temper. I remember I have ſomewhere read it, that the *Oath* by which the *Cardinals* are bound to the *maintenance* of the Church-Privileges is drawn in ſuch clear and powerful words, that *Baronius* calls it *terribile Juramentum*, and ſaith, that *the only remembring of it inflicts a horror upon his Mind, and a trembling upon his Body.* And I doubt not but when I ſhall at our next meeting diſcourſe with you about our obligation from the *Promiſſory* part of the *Oath* that relates to the *aſſiſtance* and *defence* of the *Regal* Rights and *Privileges*, you will think that every *Taker* of it, ought to have ſome ſuch ſenſe of his remembring it, as *Baronius* had about his *terrible* Oath.

A. But to go on according to the freedom you gave me, I remember you told me that you would not trouble me with any *Notions* or *Moot Points* about the Power of *Interpreting* Acts of *Parliament*, and about which you cited Sir *Chriſtopher Hatton's* Book *Of Acts of Parliament and their Expoſition:* but I remember you have *Sparſim* variouſly ſpoke of it, and you mention'd to me what King *Charles* the *Firſt* told both Houſes ſhortly after the granting the *Petition of Right*, that *to the Judges only under him the Interpretation of the Laws belong'd, and that none of the Houſes of Parliament, joint or ſeparate either could make or declare a Law without his Conſent.* I ſuppoſe you intend here to lodge no *Snake* in the *graſs* of this *Regal* Power of interpretation, whereby we may be *interpreted* out of our *Magna Charta* and the *Petition* of *Right*, and out of our *Religion*, or *Property.*

B. Your *Suppoſal* doth but right to my intentions. I have referr'd you only to *Facts*, and leave you to make a *due* uſe of them, and ſhall when we meet again ſhew you further why *I* have thus referr'd you to theſe *Facts* of the *Regal* interpretation: And in the mean time you may take notice, that as to what *I* have mentioned as a *Notion* out of the Lord Chancellor *Hatton*, (of which the intent and ſubſtance was, *That if all the Parliament were voluntarily aſſembled again and not by Writ, Eorum non eſſet interpretari dubium Statutum*, as the words are in the *Table* of his *Book*, Chap. 4. and with which the *Chapter* agrees) I told you I would not *trouble* you with it, and you may give it its *tranſeat* as a kind of curious *impoſſible* Caſe. Nor need you *amuſe* your ſelf about any Conſequences by me meant in what I told you of King *Charles* the *Firſt*, telling the three Eſtates as they were *feaſting* themſelves with the noble *Conceſſions* of the *Petition of Right.* I know nothing aſſerted by my Lord *Coke* in *Inſt.* 4. *Chap.* 1. *Of the High and Honourable Court of Parliament*, but wherein I own my agreeing with him, and particularly as to what he ſpeaks *of Judicature.* And I doubt not but every one accounts that what he ſaid *Inſt.* 3. c. 73. was very *Orthodox*, viz. *NOTE, Proclamations are of great force, which are grounded upon the Laws of the Realm.* Nor conſidering the *exuberance* of that great thing call'd *bona fides* that is to be expected from Princes, need any man fear that there

will be an Expoſition of *abrogamus* for *ſtatuimus* in any of the *Declaratory* Proclamations that ours ſhall make.

But becauſe you have named *Magna Charta*, and *the Petition of Right*, I ſhall take occaſion to *cite* to you a very *popular* Authority to ſhew you that any *Proclamations* our *Engliſh* Monarchs ſhall make for the *Diſpenſing* with *Penal* Religionary *Laws*, will be but *Declaratory* of *Magna Charta*, and of the *Petition* of *Right*. You know we have often ſpoke of the *Arguments* in the *Parliament* of 40. made by Mr. *Bagſhaw*, who was *Pars magna* of the *Faction* then regnant, and by which thoſe *Arguments* of his were much celebrated. You may find ſome account of his *Character* in *Heylin*'s Hiſtory of Archbiſhop *Laud*, who mentions his being choſen *Reader* for the *Lent Vacation* by the *Middle-Temple* in the year 1639. And he in his *Firſt Argument*, viz. *Concerning the Canons*, p. 11. ſaith, *Liberty of Religion and Conſcience are* (*as I take it*) *within the words of MAGNA CHARTA granted to me as mine Inheritance*, Cap. 29. Nullus liber homo impriſonetur aut diſſeiſetur de libertatibus vel liberis Conſuetudinibus ſuis. *And Liberty of Conſcience is the greateſt Liberty. It is by a neceſſary Conſequence and deduction within the words* impriſonetur. *For put the Caſe that the Clergy make Canons to which I never aſſented, and I break theſe Canons, whereupon I am Excommunicated, and upon a* Significavit *by the Biſhop, my Body is taken and impriſon'd by a Writ* de excommunicato Capiendo, *now ſhall I lie in Priſon all the days of my life, and ſhall never be deliver'd by a* Cautione admittenda, *unleſs I will come in and* parere mandatis Eccleſiæ, *which are point blank againſt my Conſcience.* And he had before ſaid, *A Comparatis: by an Argument* à minori ad majus; *if Property of Goods cannot be taken from me without my aſſent in Parliament, which is the fundamental Law of the Land, and ſo declared in the Petition of Right, why then Property and Liberty of Conſcience which is much greater, as much as* bona animi *are above* bona fortunæ, *cannot be taken from me without my aſſent.*

This it ſeems paſs'd as *Currant* Coin for *Judgment* of *Parliament* in behalf of *Liberty* of *Conſcience*, in the *Conjuncture* of 41, the *year* in which his *Book* was Printed: and if it were ſo then allowable, you may well think that a *Prince*'s owning the Religion that flouriſh'd here in the time of *Magna charta* (and which inſpired the Virtue that produced *Magna Charta*) and indulging ſome others of the ſame Religion to profeſs it without Puniſhment, is not likely to occaſion any *durable* ferment.

And what *I* have here referr'd to concerning *the Petition of Right*, minds me of the great *effort* of Pious zeal in our famous Biſhop *Hall*, and his laudably making uſe of the *Popularity* he had among the *Proteſtants* in ſending a *Letter* to the *Houſe* of *Commons*, *April* the 28th, 1628. during the great *ferment* about that Petition, and in which he gives ſo much *fatherly* and Prudent *advice* to the great *Agoniſts* for *Property*, that they ſhould conſider when they were at the end of their *race*, and then to ſit down and reſt. He hath in it theſe *tender* Expreſſions, *Gentlemen, For God's ſake be wiſe in your well-meant zeal,* and *our Liberties and Proprieties are ſufficiently declared to be ſure and legal*, &c. *let us not in ſuſpicion of Evils that may be caſt our ſelves into preſent confuſion. If you love your ſelves and your Country, remit ſomething of your own terms. And ſince the Subſtance is yielded by your noble Patriots, ſtand not too rigorouſly upon Points of Circumſtance. Fear not to truſt a good King, who after the ſtrict Laws made, muſt be truſted with the Execution*, &c. *relent or farewel welfare.*

You may hence eaſily imagine how paſſionately that good Biſhop would have been concerned if he had then ſeen among the *Patriots* any unquenchable heats about the not *truſting* the *King* with the *Executive* Power of

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Penal Laws, and *Laws in terrorem*, and ſuch *Laws* as Mr. *Glanvil* in the *Month* after the *Date* of the Biſhop's Letter, ſaid in a full *Committee* of both Houſes, *That the Commons muſt and ever will acknowledge that it is in His Majeſty's ABSOLUTE and undoubted Power to grant Diſpenſations in*, as I told you.

In God's Name, often think of that great *Patriotly* ſaying of *Tully* ſo often with juſt Applauſe cited by *Sir* E. Coke, *Major hæreditas venit unicuique noſtrum à jure & legibus quam à parentibus*: and you may account him a *Prophane* Perſon who *deſpiſeth his Birth-right* given him by the *Law*. And pity any one who ſpeaking of his *Property*, doth not know this to be the meaning of it, namely that *it is the higheſt Right he hath or can have to any thing, and which is no way depending upon another man's Courteſie*. And conſider, that as you have a *Property* in your *Chattels* and *Hereditaments*, ſo you have in your *Religion*.

Think often with honour of our *Anceſtors*, who by ſo many *Acts* of *Parliament*, and lawful *Canons* and *Conſtitutions* ſince the *Reformation*, provided for the ſecuring your *Property* in your *Religion*; and remember how binding the very *declarative* Laws about it are.

Caſt your Eye with Pleaſure about the Realm, and ſee if you can find any one who fears that any one will ever *move* in *Parliament* for *leave* to *bring* in any *Bill* to take away the leaſt part of your *Property* in your *Religion*. But then conſider how Savage a thing it is in any to take exceſſive *delight* in the Execution of *Penal* Laws. *Ferus eſt qui fruitur pœnâ*: and remember too that your *Prince* hath a *Property* in the *Executive* part of the *Law*, and in *diſtributive* Juſtice and in ſhewing *Mercy*. And when you hear any one telling you of a *Snake in the graſs* of the Prince's diſpenſing with *Penal* Laws, and that therefore there may be *danger* of your Prince's *diſpenſing* in *Laws* that are *beneficial*; you may tell him of the notorious *Non-ſequitur*, and that you have a *Property* in not being puniſh'd, and in having the benefit of the *Rule* as to *favourable* Statutes, being made more ſo by interpretation: *Favores ſunt ampliandi*, and on the contrary as to *Penal* ones that *odioſa reſtringi convenit*. And ſo to any ſuch impertinent Objecter you may ſay that the *voice* or *ſound* of his *Snake*, and the *Gooſe* are all one.

But conſider that ſince you have ſo much cauſe to depend on the glorious and *conſummate* juſtice inherent in the nature of our great Monarch for his defending you in the ſecurity of all the *Declaratory* Acts of *Parliament* that maintain your very Property in your Religion; both *Juſtice* and Common *Ingenuity* call upon you to own his Power of *Diſpenſing* (and even with *diſability*) for which I have ſhewn you ſo many *clear* and *inconteſtable* declarative *Judgments* of *Parliament*, and ſhall direct you to more when we meet again.

And let me tell you that you ought to have the greater *tenderneſs* for this *Prerogative* of our *Prince*; for that in his *Adminiſtration* of it, he hath in ſome Points ſhewn a greater *tenderneſs* to his *Laws* and People then our Princes ſince the Reformation have done. You may remember I ſhew'd you how Queen *Elizabeth* and King *James* did by their *Authority* out of *Parliament*, *MAKE* things *Penal* by *Diſability* that were not ſo by any Law in being, and therefore you may the leſs wonder when you ſee your Prince *diſpenſing* with it, and thereby *preventing* the Puniſhment of it, and ſometimes and in ſome Caſes *pardoning* it.

A. I ſhall carefully take notice of all theſe Matters wherein you have caution'd me: but am here occaſionally on the account of ſome things you ſaid about the *Interpretation* and the *Acquittal* from Penalties in the *Queen's Admonition* being *perpetuated* by their being *declared* good in *Parliament*,

to

to ask you if you do not account that *Diſpenſations* or ſuch *Interpretations* of the Prince by his own ſingle Authority, may be made to continue good in following Reigns?

B. I do not in the leaſt doubt but they may; and I ſhall hereafter evince the thing to you: but ſhall at preſent out of a *Manuſcript Report* I have of the great *Caſe* of *Thomas* and *Sorrell*, tell you that by one of the great Counſel who argued in *it*, it was *aſſerted* with great Learning, *That the* Non-obſtante *in that Caſe remain'd good after the King's death. That tho Acts the King doth in his Natural Capacity determine by his death, as making of Judges*, &c. (*for thoſe referr to his Natural Will*) *yet things done in his Royal Capacity as King, do not determine by his death: as a Licenſe to alien in Mortmain in one King's time ſerves in anothers; and the Reaſon is when the Subject is once exempt out of the Reſtraint of the Act he is ever exempt, unleſs the Exemption be limited*, Coke 1. Inſt. 52. 6. *If the Leſſor licence his Leſſee that is reſtrain'd, by Condition not to Alien, tho the Leſſor die, the licence ſhall ſerve the Leſſee to alien, and is not determin'd by the Leſſor's death. And in this Point he cited* Trin. 2. Jac. C. B. Rot. 2835. Wright *versus* Radcliffe, *and* Trin. 2. Jac. Norris *v.* Maſon. C. B. *as Caſes adjudged in this point.*

And I ſhall then ſhew you how the ſame thing was then by others aſſerted: but you may now for this purpoſe remember how the *inſtances* I have given you of Queen *Elizabeth's* Parliaments *approving* and *declaring* to be good, what ſhe did of this kind, and the *inſtances* of what others of our *Princes* did by their own *Authority* and out of *Parliament* being valid, and being afterward approved in Parliament, have ſupported the *extent* of the Regal Authority of this kind, as to point of *time.*

But becauſe according to the *Rule* of *Unumquodque diſſolvitur eo modo quo colligatur*, many *Indulgences*, and *Injunctions* and *Diſpenſations* being *revocable* by Kings themſelves and by their *Succeſſors*, and becauſe *declaratory* Acts of *Parliament* cannot be *repeal'd* but by other *Acts*, common Prudence doth ſuggeſt it to all to endeavour the *perpetuating* to themſelves by the *Legiſlative* Power what they account beneficial. And if you will, you may uſe the term of having it *confirm'd* by that Power; that is, if you will allow it to have been *firm before*, you may call it *confirm'd* by the Prince, and the three Eſtates afterward *enacting* it, and making its *firmneſs* perpetual. And this is the thing I aim'd at in what you might take for a *Criticiſm* when I ſaid, *that the* 39 *Articles owed no Confirmation nor Authority to the Act of the* 13*th of* Eliz.

A. I know the reaſon of your *cautious* ſpeaking here about a *tender* Point. You accounting even every *Declaratory* Judgment of *Parliament* for our *Religion* to be a *Treaſure*, and having often ſaid that you would allow ſome *Roman-Catholicks* to mock on in calling our *Religion* a *Parliamentary* Religion, did (I judge) deſign to do *honour* to our *Religion* as well as to our *Prince's*, in ſhewing that it was here *orderly* eſtabliſh'd by God's *Vicegerents*, before it was by the *Deputies* of the *People*, or the *Magnates Regni.*

B. You gueſs right at my meaning in this way to ſalve *Phœnomena.* And if you will look on a *Book* Printed in *Oxford*, A. 1645. entituled *Parliaments Power in Laws for Religion, or an Anſwer to that old and groundleſs Calumny of the Papiſts nick-naming the Religion of the Church of* England *by the name of a Parliamentary Religion*, &c. you will find the *Fact* in this Point clearly deduced through the courſe of our Laws and Conſtitutions in a long *ſeries temporum* from the Reign of *Harry* the 8*th* downward, and for the *honour* of our *Kings* and of the *Church* and the Reformation; and the meaſures I have taken in our diſcourſe have been ſuitable to thoſe of the judicious and learned *Author* of that Book. *A.* Well

A. Well Sir: we have had a great deal of *frank* Diſcourſe, and I will now take the freedom to put one *Queſtion* more to you. You have entertain'd me with the ſeveral *Interpretations* of our *Oath*, and have ſhew'd me how the obligatorineſs of them all hath been perpetuated: and you have likewiſe *ſalved* the *Phænomena* in the *Juſtice* of the *Government* as to the Laws *in terrorem*. But you know the Story of one who being Lord of a place did leave a *Pit* long open too near the *High-way*, and who at Night erected Lights about it to prevent its being miſchievous: and he afterward, hearing that ſometimes poor Blind men who were Travellers fell into it and that at other times by various accidents the *Lights* were not helpful to other Paſſengers, as being took away, or going out too ſoon; and he therefore at laſt very fairly removed both his *Nuiſance* and *Lights* together. And now may it not be wiſh'd that the *Prince* and the three Eſtates would *remove* the Laws about our *Oaths* and the *Interpretations* too, and ſo likewiſe all the Laws *in terrorem*, (among which *I* ſuppoſe you reckon the *Teſt-Acts*) at which ſo many have taken *offence*?

B. You may eaſily gueſs that till we have both of us at another meeting diſcours'd of the *Obligation* reſulting from the *Promiſſory* part of the *Oath*, I will not engage your thoughts in any matter of *Controverſie* that may in the leaſt perplex them. But as ſoon as we have fully diſcours'd that, I ſhall frankly give you my thoughts at large relating to the queſtion about *Repealing* of the *Teſt-Acts* in a Parliamentary manner: but do at preſent wholly forbear to mention what I think thereof. And I have before told you my judgment of the likelihood of the continuance of our great Oath as a great *luminary* that may perhaps enlighten our *Engliſh* World in the meaſures of *Loyalty* to the end of time; and as I have told you the Oath *giveth* no *offence* to the Conſiderate, ſo I will hope none will be taken at it.

possibility

But *I* muſt here tell you, that *I* have a greater veneration for the *Oath*, becauſe *I* look on the ſerious *Conſideration* of the *aſſertory* part of it as likely to be very *Inſtrumental* in allaying the ferment we have been ſpeaking of.

A. God grant it may be ſo.

B. You remember what *I* hinted to you about the *Clauſe* whereby you **teſtify'd and declared that the King is the only Supreme Governor of this Realm as well in all Spiritual or Eccleſiaſtical things or Cauſes as Temporal,** (and from whence it follow'd by way of natural Conſequence, that **no foreign Prince,** &c. **hath any Jurisdiction within this Realm**) being the *Corner-ſtone* on which the great **And therefore,** *I* mean, *your forſaking foreign Juriſdiction* was built. And *I* aſſure you that the ſame *firſt* **Declaration** doth bind you to the like AND THEREFORE to *renounce* the belief of any *Power* on *Earth* being able to *diſſolve* your King's *right* of *Commanding* your Obedience, and your *Obligation* to *obey* him.

And indeed if *I* had produced to you no *Judgment* of *Parliament* for the purpoſe *I* have done but that which is contain'd in the *aſſertory* part of the *Oath*, (and which is unanimouſly interpreted by *Divines* and *Lawyers*, as expreſſive of the King's right *jure naturæ* to *Command* the *Obedience* of *all* his Subjects) it might have ſufficiently ſatisfy'd you therein: and if at our next meeting you will have me dilate more on what our Lawyers have ſaid about the Point of the debt of our *Natural* allegiance, *I* ſhall do it.

A. Our great Lawyers Judgments in that Point being known may be variouſly uſeful, and directive to the many illiterate and preſumptuous Reflecters on the exerciſe of Prerogative; and eſpecially if ſo learned and ſo *popular* a *Lawyer* as Sir *Edward Coke* ſhall be by you further cited in ſuch a Caſe. And ſo what you ſhall acquaint me with as from any ſuch one of them ſhall be kindly-welcome.

B. What you have now ſaid brings it into my mind how that Great *popular* Man Sir *Edward Coke* was cited for this purpoſe by that great *popular* Man Sir *William Jones* in his learned *Argument* in **Thomas & Sorrel's Caſe**, and where he did ſo much right to the *DISPENSATIVE* Power.

A. What? Did Sir *William Jones* maintain the *King's* Power of *Diſpenſing* with *Acts* of *Parliament*?

B. Yes, and (*I* believe) was never cenſured for ſo doing by any one.

A. *I* pray tell me what was ſaid by him in his *Argument*.

B. Then according to the very Learned and Judicious and Candid *Manuſcript Report* I have of the Caſe, thus it was, *Among the three Points made, the firſt being if the* Non-obſtante *in the Patent of King* James *was good againſt the Statute of* Edw. 6. Jones *agreed that the King may by* Non-obſtante *diſpenſe with a thing Prohibited by Statute if the thing were lawful before the Statute were made.* And he afterward ſaid, that *a Diſpenſation to one and his Heirs was never good but only in that of a Sheriff.* 2. H. 7. 6. *Grant of a Shrievalty in fee* Non-obſtante *the Statute. But* Coke 7. R. 14. *Calvin's Caſe; the Reaſon of that is becauſe the King hath intereſt to have the Service of all his Subjects by the Law of Nature.*

And the truth is, that on this noble and great Conſideration it is that our *Divines* who have *treated* of the *OATH* of *SUPREMACY* have fix'd the reaſonableneſs and intent of that Oath, and of the *King's* having a *right* to Command the *Obedience* of *all* his Subjects, upon the *baſis* of the *Law* of *Nature*, as well as on the Divine Law *Poſitive*. And thus too the *ſtyle* of the *Acts* of *Parliament* about the *Oath* of *Allegiance* runs, and which *Acts* you may Conſult if you want any more *Judgments* of *Parliament* about the *indiſſolubility* of the King's right to Command the *Obedience* of the Subject, and of the Subjects duty to *obey*, before we meet again. The reaſonableneſs of the words in that *Oath* contain'd in the *Statute* of 3^tio. **Jacobi**, viz. **Of declaring that the Pope hath no Power to diſcharge any of His Majeſty's Subjects of their Obedience**, appears from its being call'd in that *Statute* **their Natural Obedience**. And **the putting in Practice the perſwading or withdrawing any of the King's Subjects from their Natural Obedience to His Majeſty, or to reconcile them to the Pope or See of Rome** is there made *Treaſon*. We will ſpeak more of other *Statutes* of this nature at our next meeting.

And in the mean time let me obſerve to you how as in the *Conjuncture* of the *Excluſion* ſo many were *infatuated* as for fear of *Popery* to come, to run upon the very *Court of Rome-Popery* at preſent, namely that of *Dominium fundatur in Gratiâ*; ſo likewiſe many mens fear of the belief of perhaps ſome Religionary *Tenets* of *Popery* gaining ground for the future, hath hunted them upon the *Popery* of thinking *that Subjects CAN in part, or in whole be diſcharged from their Natural Obedience to their Prince.*

A. *I* thank you *Sir*, for ſuggeſting that to me: for the truth is the *tenet* of thinking it lawful ſo to *diſcharge* Subjects from ſuch their *Natural Obedience*, is the very *odioſa materia* charged by ſo many on the *Councel* of *Lateran.*

B. You ſay right. But however let me occaſionally adviſe you not to charge the *odious* matter in that *Councel* on the Communion of the *Church* of *Rome*. For *I* ſhall tell you that the great *Writers* of our *Church* did after the *real* Plot of the *Gun-Powder-Treaſon* purſue ſuch noble *Methods* of Chriſtian *Charity*, as with an intent of improving the Principles of Loyalty and Allegiance among all our *Roman-Catholick* Countrymen, to endeavour to prove with all their Learning that the *Decrees* of that *Councel* obliged no *Papiſt* in point of Conſcience. King *James* in his Works

calls

calls it but *a Pretended Councel*, and Dr. *Donne* in his *Pſeudo-Martyr* endeavours to prove it no *Councel*.

Moreover Biſhop *Bilſon* in his learned Works for maintaining the *Oath* of *Supremacy*, ſaith that *Nothing was Concluded in the Councel of* Lateran. *I* have here on the Table his *Book* call'd, *The Difference between Chriſtian Subjection, and Un-chriſtian Rebellion*, Printed *A.* 1586, in which his *Learned* and *Judicious* Aſſertions and Explications of the Regal *Supremacy*, and of our Moral *Offices* to *defend* the ſame are compriſed: and there in *Part* 3. p. 6. you will find what he ſaith of the *Lateran* Councel.

A. I have not the *Book*, and ſhall be glad *I* may borrow it from you, that thereby *I* may have the better proſpect of the *Meaſures* of our *Divines* in their *Senſe* of the *Aſſertory* part of the *Oath of Supremacy*, as making the *Rights* of our Kings to Command the *Services* of all their *Subjects*, to be indiſſoluble.

B. I pray take it along with you. And *I* am the rather deſirous you ſhould do it, becauſe in this *Crooked and Perverſe Generation* many who *ſtrain* their *Conſciences* by the inobſervance of the *Oath*, may be ſo vain as to fancy that others ſtrain the *Oath* who endeavour (as *I* have done) to build the *Right* of our Kings to Command the *Services* of their Subjects, on its ſo firm Foundation. He was truſted by the Government to write on the Subject of the *Oath*, and ſo his Authority is of the more weight: and *I* ſhall here at parting read to you what he ſaith in *Part* 2. *p.* 183. where he ſo well inſinuates it, *that the Prince can freely permit, ſafely defend, generally reſtrain, and externally puniſh within the Realm:* but in *p.* 328. having ſpoke of the true *Supremacy of Princes*, he ſaith, *This is the Supremacy which we attribute to Princes, that all Men within their Territories ſhould obey their Laws, or abide their Pleaſures, and that no man on Earth hath Authority to take their Swords from them by Judicial Sentence, or Martial Violence.* And he there had before ſaid in his Margin, *the Sword of Princes is Supreme, in that it is not Subject to the Pope; and muſt be obey'd of all in things that are good.* What he ſaith likewiſe in *p.* 346. there is worth your reading, where he makes the word *Supreme* to be *a plain and manifeſt deduction out of the* 13*th of the* Romans, *Let every Soul be ſubject to the Superior Powers. If all Men muſt be ſubject to them,* ergo *they are Superior to all: and Superior to all is Supreme.* He then thus goeth on in his *Dialogue-way*, Phil. *S.* Paul *maketh them Superiors over all Perſons, but not over all things.* Theop. *That Diſtinction is ours*, (meaning Proteſtants) *not yours: we did ever interpret Supreme for Superior to all men within their Dominions.* Phil. *And ſo we grant them to be but not in all things. For in Temporal things they are Superior to all men, in Spiritual they are not.* Theop. *That reſtraint comes too late: the Holy Ghoſt charging you to be ſubject to them ſimply without addition. It paſſeth your reach to limit in what things you will, and in what things you will not be ſubject.* And he there ſaith, *Out of all Queſtion where Princes may by God's Law Command, all men muſt obey them not only for fear of wrath, but for Conſcience ſake.* To this purpoſe too he *aſſerts* the *Supremacy* in the following *Page: All men are bound to be ſubject to the Sword in all things, be they Temporal or Spiritual, not only by Suffering, but alſo by Obeying: but with this Caution, that in things that are good and agreeable to the Law of God, the Sword muſt be obey'd, in things that are otherwiſe, it muſt be endured.* At the ſame rate you will find him writing in his *Third Part*, p. 7. *The Word of God bindeth you to obey Princes, the words of men cannot looſe you.* But if you will there take notice of the *fire* of his *Zeal* breaking into a *flame* at the thoughts of the *diſplacing of Princes from their Thrones*, and of the *diſ-*

charging

charging of the People from the Oath and Obedience toward Princes, he ſaith that *they who will go to that, turn Religion into Rebellion, Patience into Violence, Words into Weapons, Preaching into Fighting, Fidelity into Perjury, Subjection into Sedition, and inſtead of the Servants of God, which they might be by enduring, they become the Soldiers of Satan by reſiſting the Powers which God hath ordain'd.*

A. I thank God *I* am a Member of the *Church* of *England* that may value it ſelf not only on its *Doctrine* of *NON-RESISTANCE*, but on its *DOCTRINE* of *Poſitive ASSISTANCE and DEFENCE* of all Juriſdictions, Privileges, Pre-eminences and Authorities granted or belonging to the King, &c. or united and annex'd to the Imperial Crown of this Realm.

B. And how from this great *Promiſſory* part of our *Oath*, our *Obligation* to *aſſiſt* and *defend* the *Juriſdiction, Privilege, Pre-eminence and Authority* of the Diſpenſative Power in particular, *granted or belonging to the King, and united and annex'd to the Imperial Crown of this Realm* doth ariſe, we will at our next meeting conſider, and when I will likewiſe ſhew you that the *Prerogative* royal is a *part* of the *Lex terræ*.

The End of the Second PART.